

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANTS AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,643

**CHIEN FAN CHU
and
TIEH MEI CHU,**

*United States Court of Appeals
For the
District of Columbia Circuit*
FILED JAN 28 1957

Joseph W. Stewart
CLERK

Appellants

v.

HERBERT BROWNELL, JR.

Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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(i)

QUESTIONS PRESENTED

1. Whether immigration officials, subordinates of the Attorney General, the appellee herein, wrongly construed "residence" in Section 6 of the Refugee Relief Act of 1953 to embrace the stay of appellants on Formosa -- with the result that the benefits of Section 6 were denied to appellants -- where the undisputed evidence established that appellants fled to Formosa and that the sole intent and purpose of their stay on Formosa was to enable appellant Chien Fan Chu to prosecute his American student visa application.

2. Whether, assuming that the term "residence" in Section 6 was correctly construed, the decision that Formosa was the last residence of appellants was arbitrary and capricious, in view of the undisputed evidence referred to above.

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Appellants

v.

HERBERT BROWNELL, JR.
Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a final order of the District Court dated October 23, 1956 (J. A. 14) which granted appellee's motion for summary judgment and denied the motion of appellants for summary judgment.

The appellants, who are aliens, seek a declaratory judgment that in considering their applications for the benefits of Section 6 of the Refugee Relief Act of 1953, appellee shall not regard Formosa as the country of last residence within the meaning of Section 6 (J. A. 2) The jurisdiction of the District Court was invoked under 5 U.S.C. 1009 and 28 U.S.C. 2201. This Court has jurisdiction of the appeal under 28 U.S.C. 1291.

STATEMENT OF THE CASE

Appellants, husband and wife, urge that defendant's subordinates have wrongfully denied to them the benefits of Section 6 of the Refugee Relief Act of 1953, namely, the invaluable status of lawful permanent residence. Section 6 requires a showing that the applicant is unable to return to the country of his last residence because of fear of persecution. Appellants insist that their country of last residence in the meaning of the statute is mainland China, and it is undisputed that they fear persecution on return there. Defendant's subordinates state that the country of last residence is Formosa, where appellants stayed for 9 months before coming to the United States. This is the sole issue. It is undisputed that appellants have met all the other requirements of Section 6. If Formosa was not the country of last residence, they are entitled to relief in this action.

Appellants fled with their infant child from Peiping, where they resided, to Formosa late in November 1948 (J. A. 20, 21, 24, 25, 30). Earlier, however, appellant Chien Fan Chu, the husband, had decided to come to the United States as a graduate student in chemical engineering, and he initiated his efforts to carry out that intention while still on the mainland. A student visa requires a showing that the applicant has been accepted for admission by an American university, and with this in mind Chien Fan Chu obtained a transcript of his Chinese university record, dated October 16, 1948 (J. A. 6, 7, 9).

His sojourn on Formosa was devoted to the routine formalities which culminated in issuance of the visa on August 12, 1949. He obtained a commendatory letter, dated January 17, 1949, from the head of the chemical engineering department at his Chinese university (J. A. 7, 8, 10). He wrote to three American universities. All three, in February and March, took action to accept him as a student. (J. A. 9, 11-13). He then travelled to Nanking, still controlled by the Nationalist

forces, and obtained a permit to secure a passport -- another necessary step for the issuance of a student visa. At the end of April the passport was issued at Canton, where the Nationalist Government had retreated from the advancing Communist armies. (J. A. 7, 22). On May 4 he presented his passport and other papers to the American consulate at Canton, where he applied formally for his visa and took a physical examination (J. A. 8, 12). Because of the uncertain military situation at Canton, and the long wait on processing visa cases at the American consulate there, he transferred his application to the consulate on Formosa, where his visa was finally issued August 12, 1949 (J. A. 8, 22). He departed promptly for the United States where he was admitted as a student and attended a university (J. A. 26).

During his sojourn on Formosa Chien Fan Chu was not employed; he lived on the family savings (J. A. 8).

The wife, appellant Tieh Mei Chu, left Formosa at the same time as her husband, with the intention of joining him in the United States. After four months in Hong Kong and nine months in France she finally succeeded in obtaining an American visitor's visa and rejoined her husband in this country in September 1950 (J. A. 25, 30, 31).

Appellant Chien Fan Chu has been employed as a chemical engineer by the Richardson Company, in the Chicago, Illinois area, since 1951. (J. A. 26).

Appellants are the parents of a child who acquired United States citizenship by birth in Cook County, Illinois in May 1951. (J. A. 26, 31, 18). Their child born shortly before the appellants fled from mainland China is still on Formosa, in the care of the mother of appellant Chien Fan Chu. (J. A. 31, 18). The father of Chien Fan Chu "didn't get a chance to escape to Formosa" and when last heard from he was still on the mainland (J. A. 24, 25).

STATUTES INVOLVED

The principal statute involved is Section 6 of the Refugee Relief Act of 1953 as amended. 67 Stat. 403, 68 Stat. 1044, 50 U.S.C. App. 1971 d, which reads:

Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide non-immigrant and that he is unable to return to the country of his birth, or nationality, or last residence because of...fear of persecution on account of...political opinion...may...apply to the Attorney General...for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that the alien...is otherwise qualified under all other provisions of the Immigration and Nationality Act except that the quota to which he is chargeable is oversubscribed, the Attorney General shall report to the Congress all the pertinent facts in the case. If...the Congress passes a concurrent resolution stating in substance that it approves the granting of the status of an alien lawfully admitted for permanent residence to such alien, the Attorney General is authorized...to record the alien's lawful admission for permanent residence as of the date of the passage of such concurrent resolution....

Sections 2 and 4 of the Act are important in arriving at the meaning of Section 6. Section 2(a) reads (50 U.S.C. App. 1971):

"Refugee" means any person in a country or area which is neither Communist nor Communist-dominated, who because of...fear of persecution...or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled...

Section 4(a) (12) and (13) read (50 U.S.C. App. 1971(b)):

Sec. 4 (a) ...Immigrant visas authorized to be issued under section 3 of this Act shall be allotted as follows:

* * * *

(12) Not to exceed three thousand visas to refugees, residing within the district of an American consular office in the Far East...

(13) Not to exceed two thousand visas to refugees of Chinese ethnic origin whose passports for travel to the United States are endorsed by the Chinese National Government or its authorized representatives.

SUMMARY OF ARGUMENT

The Refugee Relief Act of 1953 enables refugees abroad to immigrate to the United States. Section 6 extends comparable benefits to refugees who happened to be in the United States--after entering as nonimmigrants--when the law was enacted. In order to qualify under Section 6, an applicant must show that he cannot return to the country of his last "residence" because of fear of persecution. A reading of the statute leads to the conclusion that "residence" in Section 6 has the meaning of "firmly resettled" as that term is used elsewhere in the statute in reference to refugees abroad.

In addition, the statutory history shows that this was the intent of Congress.

The conclusion that "residence" means "firmly resettled" has further support in the consistent administrative interpretation of an identical provision in the Displaced Persons Act of 1948, 62 Stat. 1011, 64 Stat. 224, 50 U.S.C. App. 1953, on which the 1953 Act was modeled. Section 6 of the 1953 Act is essentially the same as Section 4 of the 1948 Act. Administrative interpretation gave the meaning of "firmly resettled" to the term "residence" in Section 4. It is absurd to say that appellants were firmly resettled on Formosa, where they sojourned only to prosecute a visa application initiated prior to their flight to Formosa.

Additional light is thrown on the meaning of "residence." All the considerations referred to above--the statutory scheme, the statutory history, and the administrative interpretation -- establish that in deciding whether an applicant had his "residence" in a certain country, his intent, during his stay in that country, is a factor of weighty

importance. If the element of intent is given weight here, it is clear that appellants did not have their "residence" in Formosa.

Assuming that defendant's subordinates applied the correct legal test of "residence," as set forth above, the determination that Formosa was the country of last residence was arbitrary and capricious. A further indication that these subordinates acted arbitrarily appears from the fact that they studiously ignored the plain evidence as to the purpose and intent of appellants' sojourn on Formosa.

ARGUMENT

I.

THE TERM "RESIDENCE" IN SECTION 6 MUST BE GIVEN THE MEANING OF "FIRMLY RESETTLED."

A. A reading of the statute leads to that conclusion.

This Court has said: "...Residence ... takes on shades of meaning according to the statutory framework in which it is found..." Kristensen v. McGrath, 86 App. D.C. 48, 179 F. 2d 796, 801, aff'd 340 U.S. 162, 175. The statute here is primarily designed to make available lawful permanent residence to refugees abroad who have not established a permanent home elsewhere. This design is accomplished, for refugees abroad, by the device of definition. A "refugee" is defined as a person who cannot return to his original country because of fear of persecution, and "who has not been firmly resettled..." Section 2(a), 50 U.S.C. App. Section 1971 (a). Section 6, supra, 50 U.S.C. App. 1971 d, extends the same benefits to a comparatively small group of refugees who were physically in the United States when the Act became law and who had entered this country as nonimmigrants. The tests prescribed here are 1) fear of persecution, on account of which the applicant 2) cannot return to the country of "last residence." It seems inescapable that these requirements are essentially the same as those prescribed for refugees abroad. "Country of...last residence," therefore, must mean a country where the applicant was "firmly resettled."

Unless this meaning is given, an applicant for the benefits of Section 6 will be barred although, on the same facts, he would be eligible were he an applicant abroad for the benefits of the Act. If the appellants had applied, in Formosa, they would have been eligible for immigrant visas, under Section 4(a) (12) and (13), despite their sojourn in Formosa for nine months in the circumstances and for the purpose here under review. See supra, "Statutes Involved". An interpretation of "last residence" which barred an applicant under Section 6, on the basis of facts which did not disqualify an applicant under Section 4(a), would operate fortuitously and irrationally. Such an interpretation should be rejected. See United States v. Brown, 333 U.S. 18, 26, 27; Mastro Plastics Corp. v. National Labor Relations Board, 350 U.S. 270, 100 L. Ed. (adv.) 255, 266.

B. The Statutory History Supports the View That "Last Residence" Refers to a Country Where the Applicant was "Firmly Resettled."

As Point I(a) demonstrates, a reading of the statute shows that Section 6 is designed to benefit those who, if abroad, would be eligible as "refugees" or "escapees," and therefore the proper test to be applied is whether the applicant was "firmly resettled." This view finds support in the legislative history.

The House Committee Report states, with reference to Section 6:

Section 6

The proposed adjustment of status of aliens who would fall within the refugee categories specified in section 4 except for the fact that they are now in the United States, having entered lawfully in a temporary nonimmigrant status, represents the committee's belief that relief should be granted to bona fide temporary residents, if aliens in situations identical to theirs are to be permitted to avail themselves of newly offered immigration opportunities. (H. Rept. No. 974, 83d Cong., 1st Sess., p. 17) ¹

¹ One purpose of the statute was to give permanent residence to certain skilled persons, such as engineers, urgently needed in the United States. Sen. Rep. 629, 83d Cong., 1st Sess., page 4. Appellant Chien Fan Chu is a chemical engineer.

The statutory history of the 1953 Act goes back to the antecedent legislation, the Displaced Persons Act of 1948, 62 Stat. 1009, 64 Stat. 219, 50 U.S.C. App. Section 1951. Section 4 of that Act,² essentially identical with Section 6 of the 1953 Act, had as its purpose relief for refugees temporarily in the United States who, if abroad, could qualify as "displaced persons."

... There may be in the United States up to 15,000 persons who are not yet admitted for permanent residence but who would qualify for admission as displaced persons, if they were abroad. ... It would seem anomalous not to admit them for permanent residence while at the same time admitting displaced persons from Europe whose circumstances are in general the same. (Report No. 1854 by Joint House and Senate Committee, 80th Cong., 2d Sess., quoted in Matter of S---, A-6887200, decided by Central Office of Immigration & Naturalization Service)

The 1948 Act, like the 1953 Act, barred applicants abroad if they had been "firmly resettled." Section 2(c), 50 U.S.C. App. Section 1951(c).

In both statutes, therefore, the legislative history shows that Congress intended "residence" to have the meaning of "firmly resettled." If words have any meaning, the term "firmly resettled" cannot embrace the sojourn of appellants on Formosa.

C. In View of Consistent Administrative Interpretation Of The Same Language in an Earlier Statute, Appellants Cannot be Held to Have had Their Last Residence in Formosa.

To counsel's knowledge, no administrative decisions have been published dealing with Section 6 of the 1953 Act. However, some decisions

² "... The term 'Displaced Person residing in the United States' means a person who establishes that he lawfully entered the United States as a non-immigrant... and that he is a person displaced from the country of his birth, or nationality, or of his last residence as a result of events subsequent to the outbreak of World War II; and that he cannot return to any of such countries because of ... fear of persecution on account of race, religion or political opinions." Section 4, 62 Stat. 1011, 64 Stat. 224, 50 U.S.C. App. Section 1953(b).

Section 2(c) of the 1948 Act defines an eligible displaced person as a displaced person who "has not been firmly resettled". 50 U.S.C. App. Section 1951 (c).

are available which interpret essentially identical provisions in the antecedent legislation, the Displaced Persons Act of 1948, 62 Stat. 1009, 50 U.S.C. App. Section 1951. Since the purposes of the two statutes, and the words used, are essentially the same, the administrative interpretation of these provisions in the prior statute is highly persuasive. Koshland v. Helvering, 298 U.S. 440, 445.

The Immigration and Naturalization Service has held that a Polish Navy veteran who served in England during the War and remained there until 1947 did not have his last residence in that country although he "might have remained in Great Britain indefinitely" and "might have become a national of Great Britain." Interim Decision No. 264. In several cases the Service has held that refugees did not have their last residence in Sweden although the applicant's whole family was there, he lived in Sweden for two to four years, and under Swedish law he could be naturalized after ten years. Interim Decision No. 263; Matter of Moorma, A-6857543, April 28, 1952; see Interim Decision No. 69; Interim Decision No. 96; Matter of Jurs, A-6419751. In some of these cases the decision points to the fact that the applicant's status was in some respects insecure or restricted, as compared to the status of an alien admitted to the United States for permanent residence. See Interim Decision No. 263 and Interim Decision No. 264, supra. The alien's intention is also regarded as important--the fact that he did not choose the "intervening" country as a place of haven. Interim Decision No. 264, supra; Interim Decision No. 272, August 30, 1950; Interim Decision No. 95, at p. 7; see Interim Decision No. 303.

The foregoing decisions make it clear that the Central Office construed "last residence" to mean "firmly resettled," in administering Section 4 of the 1948 Act. The Board of Immigration Appeals in administering Section 2(c) of the same Act--dealing with applicants abroad--has given meaning to the term "firmly resettled."

In Interim Decision No. 246, the Board held that the applicant had not been "firmly resettled," within the meaning of Section 2(c) of

the 1948 Act, in Austria, her native country. She had registered with an American immigrant society in 1946, and applied for a visa under the Displaced Persons Act in 1950. The Board said:

It is our opinion that appellant cannot be said to have been "firmly resettled" in Austria on January 1, 1948. It was her desire and intention to leave Austria, and the period of time that elapsed between the end of the war and the time that she actually succeeded in departing from her native country cannot be ascribed to any fault of hers. The fact that she worked to support herself, became engaged, and found herself a place to live does not alter the fact that she was making every effort possible to leave Austria and come to the United States.

The Central Office moved for reconsideration and urged:

... Appellant carried out an intention to reside permanently in Austria, by virtue of her resumption of residence with her mother in Austria, her application for Austrian citizenship, the taking of a course as a stenographer-typist and engaging in permanent employment in such capacity, her establishment of a residence separate and apart from her mother and her temporary engagement to a person employed in the Russian zone.

In denying the motion to reconsider the Board said;

It is our belief that the mere fact that an applicant engages in the activities necessary to the preservation of life and sanity should not necessarily deprive him of the desired status... The alien... registered for emigration in 1946 with the Hebrew Immigrant Aid Society, manifesting an intention to emigrate to the United States that long ago. As relates to this appellant, intention is an important factor in determining whether she was "firmly resettled."

In Matter of Csonka, A-8172086, May 5, 1952, the Board held that two brothers who had fled from Hungary to avoid persecution by the Communist regime did not become "firmly resettled" in Austria, within Section 2(c), even though they had been naturalized in that country.

...The appellants never had any intention of resettling or remaining permanently in Austria and...at all times they intended to emigrate to the United States; and their acquisition of Austrian citizenship was solely for the purpose of providing a means whereby their families might be able to escape from behind the Iron Curtain.

In Matter of Fischer, A-8020645, August 26, 1952 the Board held that an Austrian citizen who fled to Palestine in 1939 was not firmly resettled during his sojourn there 1939-1947. He entered Palestine illegally and therefore his employment opportunities were limited. In 1941, to escape the police who were rounding up illegal immigrants, he enlisted in the British Army. In 1945 British law granted lawful residence in Palestine to those who had enlisted in the British Army in Palestine but appellant testified that he had had no knowledge of this change in his status. He applied for admission to an Austrian university while still in the army, and he studied in Palestine after his discharge in 1946. A year later he returned to Austria to complete his studies. The Board said:

...Where intent is not "elusive" but is established by substantial evidence, its use to determine the existence or non-existence of a firm resettlement is not barred.

The applicant fled to Palestine not from choice but to escape repatriation to Austria where imprisonment was threatened....

While in the army, his purpose was to return to Austria to continue his studies....The Service has found that he had no wish to remain in Palestine after his demobilization and had no interest in becoming a permanent resident of Palestine.

* * *

....The grant of the right to permanent residence was not applied for, not desired, and not utilized; it is not the type of admission contemplated by the regulations.

See also Interim Decision No. 305, decided by the Board of Immigration Appeals September 25, 1951.

Appellants fled to Formosa and remained there only for the purpose of prosecuting a visa application the initial steps of which had been taken earlier, on the mainland. In view of the foregoing decisions, it seems clear that appellants were not "firmly resettled" on Formosa and did not have their "last residence" there. In view of those decisions, it is evident that the Central Office of the Immigration and Naturalization Service would have so decided. Unfortunately for appellants, the Service has been decentralized, with the result that the final decision in these cases was made by a Regional Commissioner, not by the Central Office in Washington. See 18 F.R. 6769, Oct. 27, 1953, 8 C.F.R. 481.16(b); 19 F.R. 8057, Dec. 8, 1954, 8 C.F.R. Section 9.5 (aaa).

II.

WEIGHT SHOULD BE GIVEN TO THE FACTOR OF INTENT.

In Kristensen v. McGrath, supra, 86 App. D.C. at 53, 179 F. 2d at 801, this Court said:

... Residence... takes on shades of meaning according to the statutory framework in which it is found... And like domicile, with which it is sometimes said to be synonymous, it is a question to be determined in each case by examination of a party's intention, acts, declarations, the nature of his stay, etc. ³

³

See Guessefeldt v. McGrath, 342 U.S. 308, 312:

"... His stay before the war, as a matter of choice, was short. The circumstances negative any desire for a permanent or long-term connection with Germany. He intended, and indeed attempted, to leave there before this country entered the war."

In Talbot v. Acheson, 110 F. Supp. 182 (D.C.D.C. 1951) (Bastian, J.) the Nationality Act of 1940 defined residence as the place of general abode, with no reference to intent, 8 U.S.C. Sections 504, 804; but the Court read into the statute the controlling element of intent.

See Giz v. Brownell, decided by Court of Appeals for the District of Columbia December 13, 1956, No. 12839, opinion of Judge Bazelon, note 3:

"... There may be other circumstances showing a purpose to reside here";

opinion of Judge Danaher, at p. 9:

"... The continuing purpose of Giz throughout the past seventeen years seems clear enough..."

The signal importance of the alien's intent, on the question of whether he acquired a "residence" or was "firmly resettled" within the meaning of the 1948 Act, has had express recognition in the administrative decisions, as set forth above in Point I(c). See Interim Decision No. 264, and Interim Decision No. 272, supra. See Interim Decision No. 246, supra:

It was her desire and intention to leave Austria...

* * *

The alien registered for emigration in 1946..., manifesting an intention to emigrate to the United States that long ago.

See also Matter of Csonka, supra:

...The appellants never had any intention of resettling or remaining permanently in Austria...

See also Matter of Fischer, supra:

...His purpose was to return to Austria to continue his studies....He had no wish to remain in Palestine after his demobilization and had no interest in becoming a permanent resident of Palestine.

See Interim Decision No. 303, decided by the Central Office October 1, 1951:

"It can hardly be said that, at that age and under such circumstances, he had formed any intention of remaining permanently in China."

The legislative history of the 1953 Act makes it clear that intent must be considered, for in both House and Senate it was emphasized that acquisition of a secure status in the "intervening" country would not require a finding of firm resettlement. The House Conferees expressly stated that naturalization conferred collectively would not necessarily mean firm resettlement:

...The conferees wish to state that the term "firm resettlement" is not designed automatically to exclude aliens from the refugee category solely on the ground that they have been collectively, by

law or edict, granted full or limited citizenship rights and privileges in the area of their present residence. (Rept. No. 1069, 83d Cong., 1st Sess., p. 10)

Senator Watkins, manager of the bill which became the Refugee Relief Act of 1953, stated in his exposition of the bill on the Senate floor:

...Nor shall the fact that the applicant is a citizen...of the nation of his residence... be-considered as a bar to his eligibility under this program.

In order that the legislative history of this legislation will be clear, I wish to emphasize that the mere fact that a person may have been granted the legal status of permanent residence in a country of asylum or even the legal status of citizenship...does not mean that that person has been firmly resettled. I repeat, the facts and circumstances in each case must be taken into account so that the humanitarian intention of the legislation to embrace persons who have not in fact been firmly resettled may be carried out. (99 Cong. Rec. 10097)

The Department of State Regulations on the 1953 Act carry out the legislative intent set forth above (22 C. F. R. Section 44.1 (1), March 22, 1955):

"Firmly resettled" means the status of an alien who ... has been reestablished in a home under circumstances which indicate his intention and assure him a reasonable opportunity of remaining permanently... [Underscoring supplied]

Plainly, therefore, acquisition of a secure status in the intervening country is not conclusive on the issue of "firm resettlement" or on the issue of "residence". The applicant's state of mind, his intent, must always be considered.

Of course, an applicant can hardly be permitted to overturn convincing evidence that he acquired a "residence" or was "firmly resettled," simply by a naked assertion of a contrary intent.⁴ But here we have no naked assertion. The evidence as to the intent of appellants regarding their sojourn on Formosa consists essentially of documents. These documents establish conclusively that appellants stayed on Formosa only for the purpose of prosecuting the student visa application, and that the initial step in the long process of qualifying for the visa was taken on the mainland, prior to the flight to Formosa.

The response of appellee's subordinates to this convincing showing of intent was to ignore it. In both written decisions the position of appellants regarding their intent and the purpose of their stay on Formosa was met with silence.

III.

APPELLEE'S SUBORDINATES ACTED ARBITRARILY AND CAPRICIOUSLY IN DENYING TO APPELLANTS THE BENEFITS OF THE ACT.

The arbitrary nature of the findings made by appellee's subordinates appears clearly from the procedure which they followed. Sketchy hearings took place, at which appellants were not represented by counsel. Apparently the "hearing" consisted of reviewing the application form previously filled out by the applicant, and receiving relevant documents as Exhibits. The Special Inquiry Officer made a written recommendation

⁴ Thus, in Interim Decision No. 244, April 18, 1951, the applicant had been naturalized in Palestine, on his own application, and "The grant of citizenship by the law of the country demanded of the alien an intent to reside in Palestine permanently and bestowed the right to reside there permanently." In reference to this decision the Board said in a later case: "...Where intent is not 'elusive' but is established by substantial evidence, its use to determine the existence or non-existence of a firm resettlement is not barred." *Matter of Fischer*, *supra*. The Board added, in a footnote, that intent was shown by "substantial evidence separate and apart from a mere allegation by the alien as to his state of mind."

that the applications be denied because Formosa was the country of last residence. (J. A. 17, 20, 21). Appellants then retained counsel, who filed exceptions in which he emphasized the intent and the nature of appellants' sojourn on Formosa. (J. A. 19). The Regional Commissioner took the adverse recommendation of the Special Inquiry Officer and rubber-stamped it "Approved And So Ordered." (J. A. 18). Counsel filed a motion to reconsider in which he again stressed that appellants stayed on Formosa solely for the purpose of completing the process, initiated on the mainland, of obtaining the student visa (J. A. 15-17).

This contention and the evidence supporting it are studiously ignored by the Regional Commissioner's written decision denying the motion to reconsider.⁵ (J. A. 36).

Apparently the ground relied upon for rejecting the applications, and regarded as conclusive, is the fact that appellees could have remained on Formosa indefinitely had they not come to the United States. (See J. A. 18, 38). But the proper test of "last residence," as shown above, is "firm resettlement." Permission to remain indefinitely is a factor to be considered in determining the question of "residence" or "firm resettlement," but it is not conclusive. It may be assumed that appellants would have been permitted to remain indefinitely on Formosa, like all the other hundreds of thousands of Nationalist Chinese who moved to that island. But the necessary implication of the administrative decision here is that every single one of these Chinese would be ineligible under Section 6, on the ground that Formosa was their "last residence," no matter how brief their stay and irrespective of the circumstances of their sojourn on the island. That is unacceptable: (1) The statute extends its benefits to Chinese on Formosa unless they have been "firmly resettled" (Sections 2(a), 4(a)(12) and (13)); their right to remain indefinitely on that island does not bar them; and Section 6 was designed to accord similar treatment to non-immigrants in the

⁵

Section 6 requires the Attorney General, and therefore, presumably, his subordinates, to act on an application "upon consideration of all the facts and circumstances of the case."

United States. (2) Senator Watkins, sponsor of the 1953 Act, declared in Senate debate: "In order that the legislative history of this legislation will be clear, I wish to emphasize that the mere fact that a person may have been granted the legal status of permanent residence in a country of asylum or even the legal status of citizenship... does not mean that that person has been firmly resettled." (99 Cong. Rec. 10097) (3) As a matter of fact, applications for the benefits of Section 6 have been granted to many Chinese who acquired the same right to remain on Formosa that appellants had. These decisions have not been published, but counsel cites Matter of Chi Fang Kuo, A-8198415, application granted by Philadelphia Regional Director; there the applicant had lived on Formosa, and had been employed, for six months in 1949 and -- after an absence in Hongkong of thirteen months -- for ten months in 1951.

As shown in Point II, supra, legal status, permission to remain indefinitely, does not of itself constitute "residence." Congress intended to bar an applicant only if he had established a permanent home elsewhere. Legal status is not enough. A finding of "residence" is justified only if the applicant's intent, the facts and circumstances of his stay, show that he has in fact established a permanent home.

The Regional Commissioner does refer, in a distorted way, to certain circumstances.

The undisputed evidence before the Regional Commissioner was that appellants had fled to Formosa in order to escape from the Chinese Communist armies who were advancing on Peiping. (J. A. 20, 21, 25, 30). The fact that their abode on Formosa was not "the result of choice" is a material indication that they did not acquire "residence" there. Kristensen v. McGrath, supra, 86 App. D.C. at 53, 179 F. 2d at 802; McGrath v. Kristensen, 340 U.S. 162, 175-176. Characteristically, the Regional Commissioner does not mention this undisputed evidence favorable to appellants. He says, "Due to the connections of this family

with the Chinese Nationalist Army they were apparently able to anticipate the eventual outcome of the military struggle and were therefore able to reach Formosa and settle in advance of the general exodus of Chinese persons from the mainland." (J. A. 37).

The key word "apparently" underscores that this is conjecture, devoid of any supporting evidence. The evidence is that appellants fled to Formosa from Peiping three weeks before Peiping was encircled by the Communist armies.⁶ The Regional Commissioner's implication is that appellants should have fled from Peiping but that the husband should have subjected his wife and infant child to the hazards of continued stay on the mainland during the civil war, before the flight to Formosa. Such an interpretation of the statute mocks the "humanitarian intention of the legislation" stressed by its sponsor, Senator Watkins.

The Regional Commissioner appears to rely, as some basis for his finding, on the fact that appellant Chien Fan Chu, on his visa application form, gave as his "last permanent residence" a street address in Taipei, Formosa. But in the mind of the applicant he was simply giving an address where he could be reached; he was not using the technical meaning of "residence" given to that term in a statute enacted four years later.⁷ The Regional Commissioner adds that other members of the family were listed at the same address and "This in itself would

⁶ The New York Times dated January 23, 1949 (attached to counsel's Brief In Opposition To Proposed Order) reports that "Peiping has been encircled for more than a month." (J.A. 20, 16). Appellants fled to Formosa late in November 1948. (J.A. 7, 21).

⁷ Cf. Interim Decision No. 246, *supra*: "...It is clear that the term 'permanently resettled' did not have the technical connotation to her that it has to the interpreters of statutes."

In the case of the wife, the Regional Commissioner is unable to find a form which she filled out in which she gave a street address on Formosa. He gets around that difficulty: "... Upon her arrival at New York on September 13, 1950...she made no claim to be other than a resident of Formosa..." Thus the Regional Commissioner reasons that her Section 6 application is prejudiced by the fact that she did not volunteer a claim of "residence" within the meaning of Section 6 not quite three years prior to enactment of the 1953 Act.

indicate to the Consular Service that the applicant's entire family was reasonably well established at one central point and would tend to establish the temporary nature of the applicant's visit to the United States." ⁸ But the question is not what the Consular Service thought; Section 6 of the 1953 Act deals with aliens who entered the United States as nonimmigrants, and every single one of them satisfied a consular official as to "the temporary nature of the applicant's visit to the United States." The question is whether the evidence justifies a finding that the applicants were "firmly resettled" on Formosa. A glance at the evidence reveals, without question, that the two appellants were not "firmly resettled" or "reasonably well established" on Formosa; they came there in flight and stayed there only for the purpose of completing the student visa formalities initiated prior to their flight.

The Regional Commissioner has taken two or three items of no significance and attempted to balloon them into sufficient grounds for denying the applications. These items do not constitute the "reasonable, substantial, and probative evidence" which Congress requires of the Immigration and Naturalization Service, in its day-to-day activities. Immigration and Nationality Act of 1952, Section 242(b)(4), 8 U.S.C. 1252(b)(4). These items have "no more probative value than the tattlings from a town meeting." United States ex rel. Brzovich v. Holton, 222 F. 2d 840, 844 (C. A. 7, 1955).

Without these items, the administrative decision perforce rests on the ground that the benefits of Section 6 are denied to all Chinese who stayed on Formosa, regardless of the circumstances. Since other Chinese applicants who came from Formosa have been granted the benefits of Section 6, denial to appellants is arbitrary and capricious. Mastrapasqua v. Shaughnessy, 180 F. 2d 999, 1003 (C. A. 2, 1950); see

8

The Regional Commissioner disregards the fact that Chien Fan Chu's father had been unable to escape to Formosa and was still on the mainland. (J.A. 24, 25). In view of the pre-eminent position of the father in the Chinese family, it is difficult to excuse this oversight.

Rubinstein v. Brownell, 92 App. D.C. 328, 333, 206 F. 2d 449, 455.

The ground for denial is fatally defective; Congress never intended that all Chinese who set foot on Formosa, and thus acquired the legal right to stay there, would be barred from the benefits of Section 6.⁹

...Defendant cannot grant plaintiff a hearing for the purpose of considering the facts and circumstances to determine whether he is qualified to have his case submitted to Congress, and then upon illegal grounds deny him right to have the matter submitted to Congress. Such action would be arbitrary, capricious, unlawful, and justify interference by the Court. (Gutnayer v. McGranery, 108 F. Supp. 290, 292 (D.C.D.C. 1950), aff'd 94 App. D. C. 90, 91, 212 F. 2d 462, 464).

CONCLUSION

The order entered below should be reversed and appellants' motion for summary judgment should be granted.

Respectfully submitted,

J. H. KRUG

1822 Jefferson Place, N. W.
Washington 6, D. C.

Attorney for Appellants

OF COUNSEL:

F. Raymond Marks, Jr.
Heineman, Marks and Simon
105 W. Adams St.,
Chicago 3, Illinois

⁹ Insofar as this case turns on statutory interpretation, Section 6 should be given a liberal construction, in keeping with "the humanitarian intention of the legislation," stressed by Senator Watkins. Two recent District Court decisions have given a liberal interpretation to Section 6. Shio Han Sun v. Barber, 144 F. Supp. 850 (N.D. Calif. 1956) held that "physically present in the United States" included a sailor on the high seas, who thus became eligible. Cheng Fu Sheng v. Barber, 144 F. Supp. 913 (N.D. Calif. 1956) held that a member of the Chinese Nationalist forces, sent to this country for training, was eligible to have his case reported to Congress even though he was a deserter.

12. 1. 1973

(i)

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JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1 [Filed December 6, 1955]

CHIENT FAN CHU)
and)
TIEH MEI CHU)
P. O. Box 369)
Maywood, Illinois,)
Plaintiffs,)
vs.)
HERBERT BROWNELL, JR.)
individually and as)
Attorney General of the)
United States,)
Defendant.)

Civil Action No. 5335-55

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, by their attorney, J. H. Krug, complaining of the defendant, respectfully show to this Court and allege:

1. This is a suit of a civil nature for a declaratory judgment and for review under the Administrative Procedure Act. This Court has jurisdiction under Sections 11-305 and 11-306 of the District of Columbia Code; 5 U.S.C. Section 1009; and 28 U.S.C. Sections 1331, 1651, 2201 and 2202.

2. Defendant is Attorney General of the United States. As such he is charged with the statutory duty to determine after appropriate hearings the eligibility status of applicants for the benefits of Section 6 of the Refugee Relief Act of 1953, as amended, 50 U.S.C. App. Section 1971d, herein called "the Act". As such, he has the ultimate executive power in administration of the laws pertaining to deportation of aliens. He is found within the District of Columbia.

3. Plaintiffs are husband and wife, both natives and citizens of China. Plaintiffs entered the United States as bona fide nonimmigrants, in August 1949 and September 1950, respectively.

2 4. Plaintiffs duly applied for the benefits of Section 6 of the Act, in order to establish eligibility for adjustment of status to that of permanent residence under said Section 6.

5. Subsequently plaintiffs were accorded hearings on their applications for the benefits of Section 6 of the Act. On February 25 and July 22, 1955 agents of defendant denied the applications of plaintiffs, on the ground that plaintiffs did not have the status of eligibility for the benefits of Section 6 of the Act.

6. Said decision denying plaintiffs' applications was arbitrary and capricious; it was unsupported by any substantial evidence and was contrary to the undisputed evidence introduced at the hearings referred to in paragraph 5 herein. Said decision, wrongfully holding that Formosa was "the country of . . . last residence", rested solely on an interpretation of the term "last residence" in Section 6 of the Act, an interpretation which was contrary to the intent of Congress. Said decision unlawfully deprived plaintiffs of their invaluable rights to the benefits of Section 6 of the Act, namely, the status of permanent legal residence in the United States.

7. Plaintiffs have exhausted all available administrative remedies.

8. Agents of defendant, wilfully and without authority of law, threaten to and will require plaintiffs to depart from the United States and, if they do not depart, will forcibly deport them.

9. The matter in controversy between each of the plaintiffs and defendant exceeds \$3,000.

WHEREFORE, plaintiffs pray for the following relief:

1. A judgment declaring that in considering the application of each plaintiff for the benefits of Section 6 of the Act, Formosa shall not be regarded as such plaintiff's country of last residence within the meaning of said Section 6.

3 2. Such other and further relief as may appear appropriate in the premises.

/s/ J. H. Krug* * *

/s/ Henry Heineman * * *

Attorneys for Plaintiffs

Filed December 6, 1955.

4 [Filed January 5, 1956]

ANSWER

Comes now the defendant, by his attorney, the United States Attorney, and answers the complaint of plaintiffs as follows:

First Defense

Responding specifically to the numbered paragraphs of the complaint, the defendant avers:

1. The defendant is not required to answer the allegations contained in paragraph 1 of the complaint.

2. Admitted.

3. Defendant admits that plaintiffs, husband and wife, both natives and citizens of China, entered the United States in 1949 and 1950, respectively but avers that these entries were made under the following circumstances:

The male applicant last entered the United States at the port of Honolulu, Hawaii, on August 24, 1949 as a student under Section 4(e) of the Act of May 26, 1924. The female applicant last entered the United States at the port of New York, New York, on September 13, 1950 and was admitted as a temporary visitor for a period of six months. Both applicants have remained in the United States continuously since the date of their admission.

4. Admitted.

5. Defendant admits that plaintiffs were accorded hearings on their application for the benefits of Section 6 of the Refugee Relief Act of 1953, as amended, and that agents of defendant denied the application

5 on February 25 and July 22, 1955. Defendant denies the remaining allegation and avers that these hearings and the denial of application were made under the following circumstances:

On December 10, 1954 a special inquiry officer recommended that the aliens' application for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953, as amended, be denied for the reason the aliens were able to return to the country of their last residence. Exceptions were filed to the aforesaid decision and on February 25, 1955 after careful consideration of the entire record, the Acting Regional Commissioner, Northwest Region, approved the recommended denial of adjustment of immigration status for the reason that both aliens were able to return to the country of their last residence, Formosa. The motion for reconsideration of the Regional Commissioner's order was denied on July 22, 1955.

6. Denied.
7. Admitted.
8. Denied.
9. Denied.

Second Defense

For further answer and as a separate and complete defense to the complaint the defendant avers that the complaint fails to state a claim upon which relief may be granted by this court.

Third Defense

For further answer and as a separate and complete defense to the complaint, the defendant avers that the administrative proceedings on plaintiffs' applications for adjustment of immigration status have been properly conducted pursuant to law and regulation; that there has been no arbitrary or capricious determination made anywhere within the said administrative proceeding; that the final result is premised upon a careful consideration of the entire administrative record and the application of the appropriate statutory law, and such determination having been reasonably and properly made, should not be disturbed by this court.

6 WHEREFORE, having answered the plaintiffs' complaint, the defendant demands judgment together with the costs of this action.

/s/ Leo A. Rover

United States Attorney

/s/ Oliver Gasch

Assistant United States Attorney

/s/ Frank H. Strickler

Assistant United States Attorney

/s/ Kitty Blair Frank

Assistant United States Attorney

[CERTIFICATE OF SERVICE]

7 _____
[Filed September 12, 1956]

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant by his attorney, the United States Attorney, and moves this Court for summary judgment herein for the reason that there is no material issue of fact and defendant is entitled to judgment as a matter of law. Attached hereto and made a part of this motion is the File No. A-7285374 and A-10418894 of the Immigration and Naturalization Service identified as Exhibit No. 1.

/s/ Oliver Gasch

United States Attorney

/s/ Edward P. Troxell, Principal

Assistant United States Attorney

/s/ Frank H. Strickler

Assistant United States Attorney

/s/ Kitty Blair Frank

Assistant United States Attorney

[CERTIFICATE OF SERVICE]

8 [Filed September 21, 1956]

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs by their attorney, J. H. Krug, move this Court for summary judgment herein on the ground that the pleadings, Exhibit No. 1 attached to defendant's motion for summary judgment, and the affidavit of plaintiff Chien Fan Chu dated September 17, 1956 demonstrate that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law. Attached hereto and made a part of this motion is the said affidavit of plaintiff Chien Fan Chu.

/s/ J. H. Krug * * *

Counsel for Plaintiffs

Of Counsel:

F. Raymond Marks, Jr.,

* * * *

9 [CERTIFICATE OF SERVICE]

10 [Filed September 21, 1956]

AFFIDAVIT

I, CHIEN FAN CHU, also known as EDWARD CHU, being first duly sworn on oath deposes and says that I am the same CHIEN FAN CHU, who is a plaintiff in the above captioned case, and in order to clarify some of the ambiguities in the record in the above captioned case, state:

1. That I served as an interpreter for the United States Army in the China theatre of operations in 1945; that I was released from service as an interpreter for the United States Army on the 22nd day of September, 1945. As part of that release, I was given the privilege of taking an examination which might entitle me to further education and training in the United States. It was, at that time, my intention to take advantage of the privilege thus extended; and further, at that time, it was my intention to come to the United States.

2. While I was in Manchuria, as an Assistant Manager of a chemical plant at Mukden, which was controlled by the Nationalist Army of China, I went to Peking in 1947, to take the examination offered to ex-interpreters for the United States Army. In 1948, when I was in Peking, I procured English translations of my transcript of record from National Central University in Nanking, China. It was my inten-

11 tion at that time to pursue a course of studies at either the University of Texas, the University of Washington, or the University of Wisconsin. Procuring an English translation of my transcript of record from National Central University in Nanking on October 16, 1948, was the first step in effecting my plans to study in the United States.

3. On November 28, 1948, I arrived on Formosa. I came to Formosa because the political and military situation around my home at Peking was extremely dangerous. I arrived in Formosa on November 28, 1948, without documentation of any sort.

4. Immediately upon my arrival in Formosa, I took the second step towards effecting my plan to study in the United States. I returned to Nanking, China, in order to seek the assistance of my Professor, Jiun Shyr, Head of the Department of Chemical Engineering, of National Central University, in making application to the aforementioned universities in the United States. Professor Shyr sent three (3) letters on January 17, 1949, from Nanking, China.

5. During the ensuing weeks, I travelled many times between Formosa and Nanking in order to expedite all documents necessary for my entry into one of the aforementioned schools and into the United States. In this connection I was in Nanking in April, 1949, in order to get certain documents from the Board of Education at Nanking. On April 21, 1949, the Board of Education (Ministry of Education), issued to me a permit to secure a passport. On this very day, the Nationalist Government of China was forced to remove its operations from Nanking to Canton, China, by reason of communist aggression. I immediately followed the governmental operations to Canton, by airplane, where I applied for my passport. On April 28, 1949, in Canton, China, I was issued a passport.

6. Upon the receipt of my passport, I went to the United States Consulate at Canton, China, where I made preliminary application for a student visa. In this connection, I took a physical examination at the
 12 direction of the United States Consulate at Canton, China. There seemed, however, to be an extremely long wait for issuance of visas at the Consulate in Canton, China.

7. Because of the seemingly long wait to obtain a visa, and because of the extremely dangerous and uncertain situation on the Mainland of China, I again retired to Formosa, without documentation, where I immediately contacted the United States Consulate at Taipei, Taiwan (Formosa), and renewed my efforts to obtain a student visa to the United States.

8. Meanwhile, in February, 1949, the University of Texas informed me that I was accepted for admission to their Graduate School for work in Chemical Engineering. In August, 1949, I obtained my visa from the United States Consulate at Taipei, Taiwan. I left Formosa for the United States immediately upon receipt of my student visa.

9. The entire time that was spent between November 28, 1948, when I arrived in Formosa, for the first time, and the latter part of August, 1949, when I left Formosa, was occupied by my direct attention to the visa problem. In this connection, as referred to above, I made several trips to the Mainland to expedite my admission to an American University, and my procurement of a visa to the United States. I did no work during any of the time spent in Formosa, and lived entirely on my family's savings. I had no intention of remaining or settling in Formosa.

/s/ Chien Fan Chu

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

Subscribed and sworn to before me this 17th day of September, 1956.

/s/ Notary Public

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[Filed September 21, 1956]

Plaintiff's Ex. 1-A

NATIONAL CENTRAL UNIVERSITY
NANKING, CHINA

October 16, 1948

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Chiu Chien-Fan was graduated in July, 1946 with a B.S. Degree from the Department of Chemical Engineering, College of Engineering of this Institution and that he has taken the courses indicated in the accompanying transcript of record.

/s/ [Illegible]

Dean

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[Filed September 21, 1956]

Plaintiff's Ex. 2

NATIONAL CENTRAL UNIVERSITY
NANKING, CHINA

Mr. Chiu Chien-Fan
c/o Dept. of Chemical Eng.
National Central University
Nanking, China.

January 17, 1949

Dean of Graduate School
University of Wisconsin
Madison, Wisconsin.
U. S. A.

Dear Sir,

I want to apply for an admission to the Department of Chemical Engineering in your Graduate School for the coming semester.

I was graduated from the Department of Chemical Engineering of National Central University in July 1946 with a degree of Bachelor of Science. After graduation I worked for more than two years in a chemical plant in Mukden, and the last position I held there before evacuation was assistant manager. For the time being, I am serving as an engineer in Hopei Provincial Government.

I have adequate support from my family for at least three year's schooling in the United States.

It will be highly appreciated if you could let me know the result of your consideration at your early convenience.

Sincerely yours,
Chiu Chien-Fan

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[Filed September 21, 1956]

Plaintiff's Exhibit No. 3

NATIONAL CENTRAL UNIVERSITY
NANKING, CHINA

January 17, 1949

Dear Sir,

This is to introduce to you Mr. Chiu Chien-Fan who is applying for admission to your school where he intends to pursue an advanced study in Chemical Engineering.

Mr. Chiu graduated from National Central University in July 1946, with a degree of Bachelor of Science in Chemical Engineering. He was one of the best students, combining ability with industriousness.

He can speak and write fluent English. I trust you will be able to appreciate him as an assiduous worker with an agreeable personality.

Sincerely yours,
Jiun Shyr
Head of the Department of
Chemical Engineering

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[Filed September 21, 1956]

Plaintiff's Exhibit No. 4

THE UNIVERSITY OF TEXAS
Office of the Registrar
Austin 12

February 22, 1949

Mr. Chien-Fan Ch'u
c/o Mr. C. Y. Chen
151 Noyes Laboratory
University of Illinois
Urbana, Illinois

Dear Mr. Ch'u:

Your friend at the University of Illinois, Mr. C. Y. Chen, has sent me your record at National Central University in Nanking. It is an excellent one and I therefore have pleasure in sending you this letter of acceptance for admission to our graduate school for work in Chemical Engineering. Our Summer Session begins on June 1, 1949, the Long Session on September 15, 1949 and the second semester on February 1, 1950.

The registration and tuition fee for all nonresidents is \$150 per semester. The student activities fee is \$15 per session. There are also a few small fees, and every new student registering for the first time makes a property deposit of \$7. The cost of living in Austin is high, just as it is elsewhere. The price of board and lodging ranges from \$45 or \$50 a month to \$85 or \$90 a month. Books and other materials cost around \$50 a semester. Then, there are incidentals, and their amount will depend upon your expertness in spending money.

Upon arrival, you should call on Mr. Joe Neal, Foreign Student Advisor, B Hall 9, The University of Texas. He will be glad to assist you.

Very truly yours,

/s/ E. J. Mathews, Registrar
and Dean of Admissions

EJM:pl

[Filed September 21, 1956]

Plaintiff's Ex. No. 5

CONSULATE GENERAL OF THE UNITED STATES
OF AMERICA

CANTON, CHINA

May 4, 1949

THE UNIVERSITY OF WISCONSIN

Madison 6

March 8, 1949

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Chien-Fan Ch'u has been accepted as a student by the Graduate School of the University of Wisconsin for advanced work in the department of Chemical Engineering.

This permit may be presented for registration for the summer session of 1949 or the 1st semester of the academic year 1949-50.

/s/ J. Homer Herriott

Associate Dean

JHH/ib

[Filed September 21, 1956]

Plaintiff's Ex. No. 8

UNIVERSITY OF WASHINGTON
OFFICE OF THE REGISTRAR

Seattle 5

February 11, 1949

For the IMMIGRATION OFFICIALS

To Whom It May Concern:

This is to certify that Mr. Chien-Fan Ch'u has presented at this office credentials certifying to his graduation from National Central University in 1946.

On the basis of this evidence, the University of Washington issues, herewith, a certificate of admission for any quarter of the ensuing year, subject only to the presentation of satisfactory evidence to the

nearest American Consul that he, Mr. Ch'u, possesses sufficient knowledge of English to enable him to pursue with profit courses of instruction conducted in the English language, and that he has been examined within thirty days by a reputable physician and has been found to be in sound physical condition.

To insure a student time to obtain his passport, the term "any quarter of the ensuing year" is used. This means the student may begin his study at the University of Washington in the Spring Quarter of 1949, Summer Quarter of 1949, Fall Quarter of 1949 or Winter Quarter of 1950. After that time renewal of the immigration letter is required.

Respectfully submitted,
Registrar's Office
By /s/ Francis M. Willard
Admissions

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[Filed September 21, 1956]

Plaintiff's Exhibit No. 9

UNIVERSITY OF WASHINGTON
Office of the Registrar
Seattle 5

February 11, 1949

Mr. Chien-Fan Ch'u
c/o Department of Chemical Engineering
National Central University
Nanking, China

Dear Mr. Ch'u:

The Admissions Board of the Graduate School has carefully inspected your records from National Central University. Since your scholarship is excellent, they have found placement for you in the Graduate School with a major in Chemical Engineering.

Enclosed is a statement which you should present to the nearest American Consul when you apply for your passport. He will examine you in English to determine whether or not you have sufficient knowledge

of the language to carry college work successfully. Upon your arrival in Seattle you will also be examined by our English Department to determine your placement in English instruction.

It is to be understood that the University of Washington cannot assume any responsibility whatever for a student's financial support. If he comes without adequate funds or if his funds fail while he is here, the circumstances arising will be primarily between himself and the diplomatic corps maintained in the United States by his country.

When you reach the campus you will be assigned to an adviser who will help you plan your course of study. We shall also be glad to have you call upon this office at any time that we may be of assistance.

Very truly yours,

Registrar's Office

By

/s/ Frances M. Willard

Admissions

FMW:hg
Encls.

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[Filed October 23, 1956]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHIEN FAN CHU)
and)
TIEH MEI CHU)
P. O. Box 369)
Maywood, Illinois,)
Plaintiffs)
vs.)
HERBERT BROWNELL, JR.)
Defendant)

Civil Action No. 5335-55

ORDER

This cause having come on for hearing on defendant's motion for summary judgment and plaintiff's motion for summary judgment, and it appearing to the Court that there exists no genuine issue of material

fact, and that defendant is entitled to judgment as a matter of law, it is this 23rd day of October, 1956

ORDERED, that defendant's motion for summary judgment be and the same is hereby granted, and it is

FURTHER ORDERED, that plaintiff's motion for summary judgment be and the same is hereby denied.

/s/ Jas. W. Morris

JUDGE

[CERTIFICATE OF SERVICE]

42

[Filed November 13, 1956]

NOTICE OF APPEAL

Notice is hereby given this 13th day of November, 1956, that Chien Fan Chu and Tieh Mei Chu hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 23rd day of October, 1956 in favor of Defendant Brownell against said Plaintiffs.

/s/ J. H. Krug

Attorney for Plaintiff

[Service]

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Subject: Proceedings for adjustment of immigration status under
Section 6 of the Refugee Relief Act of 1953, as amended.

Applicants: Chien Fan Chu
Tieh Mei Chu

File No.: A7 285 374 and V315 326 IS-4

PETITION FOR RECONSIDERATION OF REGIONAL
COMMISSIONER'S ORDER

This is a petition for reconsideration of the Regional Commissioner's order denying the application of the above identified applicants for adjustment of status under Section 6 of the Refugee Relief Act of 1953, as amended. The Regional Commissioner's order was rendered in the form of a rubber stamp approval of the order of the District Director of the Chicago District of the Immigration and Naturalization Service.

A brief was submitted on behalf of the applicants, traversing the proposed order of the Director of the Chicago District. This brief raised what are believed to be two very important and pressing issues concerning the application and interpretation of the Refugee Relief Act of 1953. Either the issues were completely ignored or were merely reviewed in a cursory manner and dismissed without careful consideration, as no comments were presented in the Regional Commissioner's order dealing with the pertinent issues raised. Such action would appear to nullify the purported privilege of permitting applicants to file a brief.

* * * * *

The Issue of Last Permanent Residence

Turning now to the first issue, the Regional Commissioner's attention is respectfully directed to the record of the applicants, available in the files of the Immigration and Naturalization Service. A review of this record will reveal that applicants resided on the mainland of China for practically all of their natural lives or up until November of 1948. At that time they left the mainland of China and went to Formosa, where, after the relatively short period of nine months, the male applicant

travelled to United States under a student visa and his wife went to France. Prior to the time the male applicant left the mainland of China and went to Formosa he was in the process of applying for a student visa to the United States. The initial steps for application for this visa were taken while the male applicant and his family were residing in Peiping, which was the city of his family home. As pointed out in the brief, the Chinese Communist army was at that time expanding its control over the mainland, and was in fact quite close to the city of Peiping. Hence, the male applicant and his family had two choices, (a) to go to some part of the mainland which was at this time not occupied by the Chinese Communists, or (b) to go to Formosa, which appeared to offer the best refuge in view of the fact that the mainland of China and Formosa are separated by a considerable body of water. Therefore, the decision of the male applicant and his family to go to Formosa was the obvious expedient, and one which was taken none too soon, for the reason that the Chinese Communists occupied Peiping just two months after the family had fled to Formosa, namely in January of 1949. The occupancy of Peiping by the Chinese Communists is substantiated by the photostat of the front page of the New York Times dated January 25, 1949, which photostat was attached to a copy of the brief filed on behalf of the applicants.

In the statement of the Special Inquiry Officer it is noted that he brought up the point that the male applicant, in applying for his student visa, had listed Formosa as his last permanent residence. It is believed that entirely too much emphasis has been placed on this innocuous statement of the male applicant while on Formosa, for the reason that it is quite obvious that he had to list some kind of a residence where he could be reached and, since he no longer could live in Peiping, he could not give this city as his last permanent residence. In view of the fact that the male applicant and his family were forced to flee from Peiping and take up residence on Formosa, and, also, in view of the fact that they were only on Formosa for a period of nine months and

actually had no intention of living there permanently, it is difficult to see how a decision could be reached that Formosa is in any way the last permanent residence of the male applicant and his family.

* * * * *

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Chicago, Illinois

February 25, 1955

Files: A-7285374 and V-315326 - Chicago
Serial Nos. 54 and 28

In re: CHIEN FAN CHU, and
TIEH MEI CHU

PROCEEDINGS UNDER SECTION 6 OF THE REFUGEE RELIEF ACT
OF 1953, as amended.

IN BEHALF OF APPLICANTS: No one.

APPLICATION: Adjustment of immigration status.

The applicants are husband and wife, natives and citizens of China, ages 31 and 26, respectively. The male applicant last entered the United States at the port of Honolulu, Hawaii on August 24, 1949, when he was admitted as a student under Section 4(e) of the Act of 1924. The female applicant last entered the United States at the port of New York, N. Y. on September 13, 1950, as a visitor for six months. At the time of entry the male applicant intended to remain in this country three years. The female applicant at the time of entry intended to remain in this country only so long as her husband was here.

Both applicants resided all their lives on the mainland of China until November, 1948, when they went to Formosa. They remained on Formosa until August, 1949. At that time the male applicant came to the United States as a student and the female applicant went to Hong Kong, where she remained until December, 1949, at which time she went to France as a visitor. From France she came to the United States. Both claim that Formosa is not the place of their last residence. Both stated that they have no fear of persecution for any reason

upon their return to Formosa. They do claim persecution or fear of persecution on account of their political opinions, were they to return to the mainland of China, because of the Communist regime in power on the mainland.

In his application for his student's visa, which was issued at Taipei, Taiwan, Formosa on August 12, 1949, the male applicant stated his last permanent residence was Taipei, Taiwan, China (Formosa). At the time of the female applicant's admission into the United States at the port of New York, N. Y. on September 13, 1950, she was accorded a hearing before a Board of Special Inquiry, which found, in part, at the time, that she could return to France on or before March 30, 1951 and to Formosa at any time. The applicants were married at Peiping, China on February 6, 1947. A child was born of this marriage at Peiping and is now six years of age. This child is on Formosa, being cared for by the male applicant's mother and sister. His sister's husband is a Lieutenant General in the Nationalist Army. A second child was born of this union at Maywood, Illinois on May 26, 1951.

There is no evidence that the applicants could not have remained on Formosa permanently, where the Nationalist Government of China is located and which government is recognized by the United States as the lawful government of the country of which they are nationals. It is concluded that Formosa is the country of the applicants' last residence and that they can return thereto without fear of persecution because of their race, religion or political opinion. The applications for adjustment of status must, therefore, be denied.

RECOMMENDATION:

IT IS RECOMMENDED that the aliens' application for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953, as amended, be denied for the reason that they are able to return to the country of their last residence.

/s/ Jerome T. McGowan, Special Inquiry
Officer

APPROVED AND SO ORDERED /s/ O. S. Remington
Acting Regional Commissioner Northwest Region

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

January 18, 1955

Subject: Proceedings for adjustment of immigration status
under Section 6 of the Refugee Relief Act of 1953,
as amended.

Applicants: Chien Fan Chu
Tieh Mei Chu

File No: A 7285374 and V 315326 IS-4

BRIEF IN OPPOSITION TO PROPOSED ORDER OF
DIRECTOR OF THE CHICAGO DISTRICT

This brief is submitted on behalf of the applicants, husband and wife, for the purpose of traversing the proposed order recommended by the Director of the Chicago District, denying applicants' application for adjustment of status under Section 6 of the Refugee Relief Act of 1953, as amended.

* * * * *

The male applicant served with the Chinese Nationalist Army during the war against the Japanese, achieving the rank of Lieutenant Colonel. Additionally, he served in the capacity of interpreter for the United States Army stationed in China. Following the foregoing activities he determined that he should continue his technical education in the United States and was in the process of completing the necessary formalities to achieve this ambition at the time he and his wife found it necessary to leave Peiping on the mainland of China in November of 1948 and go to Formosa. After nine months on Formosa the male applicant was finally able to complete the necessary formalities and depart for his chosen school in the United States.

* * * * *

In view of the foregoing it seems hardly likely that a native Chinese citizen would go to another country, protectorate, etc. which is not even a part of his own country and where adequate living conditions were doubtful, and there establish a permanent residence. It appears

obvious from the facts that Formosa was merely a place of temporary residence to which applicants were forced to flee to escape from the Communist regime. This is further supported by the fact that they remained on Formosa for only nine months, and actually had no intention of remaining there longer. In fact it is to be noted that the male applicant's passport No. 181 99/528045, issued by the Ministry of Foreign Affairs of the Chinese Government, is dated April 29, 1949.

* * * * *

[Clipping from New York Times dated January 23, 1949]

NANKING SPEEDS TALKS

* * *

Nanking, Jan. 22. -- A separate peace settlement for the Communist besieged city of Peiping was concluded today ...

..... Peiping has been encircled for more than a month."

APPLICATION TO ADJUST IMMIGRATION STATUS UNDER
SECTION 6 OF THE REFUGEE RELIEF ACT OF 1953

I submit this application for adjustment of my immigration status pursuant to the provisions of section 6 of the Refugee Relief Act of ¹⁹⁵³ 1952 (Pub. Law 203, 83d Cong.)

1. My name given at birth was Chien Fan Chu
2. I entered the United States under the name of Chien Fan Chu

* * * * *

7. My last foreign residence was 132 Jin Hwa Jie, Taipei, Taiwan
I resided there from Nov. 1948 to Aug. 1949

8. Description and date of events which occurred subsequent to my entry into the United States causing me to be unable to return to the

country of my birth, nationality, or last residence: I left my home town at the end of Nov. 1948 because of the threat of the Communist military attack. Shortly after I arrived Taiwan, my home was occupied by Communist. Up to date the whole mainland of China, including my home is under Communist control.

* * * * *

/s/ Chien Fan Chu

**APPLICATION TO ADJUST IMMIGRATION STATUS UNDER
SECTION 6 OF THE REFUGEE RELIEF ACT OF 1953**

I submit this application for adjustment of my immigration status pursuant to the provisions of section 6 of the Refugee Relief Act of ¹⁹⁵³~~1952~~ (Pub. Law 203, 83d Cong.)

1. My name given at birth was Tieh Mei Tuan
2. I entered the United States under the name of Tieh Mei Chu

* * * * *

7. My last foreign residence was 44 Rue Des Bernardins Paris France
I resided there from Dec. 1949 to Sept. 1950.

8. Description and date of events which occurred subsequent to my entry into the United States causing me to be unable to return to the country of my birth, nationality, or last residence: I left my home town (Peiping) Nov. 1948 prior the attack of Communist. Shortly I went to Taiwan with my husband my home was occupied by the Communist. Up to date the whole mainland of China is under Communist control. I came to United States via France to join my husband, and we are not willing to return our home, since it is controlled by Communist.

* * * * *

/s/ Tieh Mei Tuan

UNITED STATES OF AMERICA
IMMIGRATION VISA AND ALIEN REGISTRATION

* * * * *

Passport No. 18199/528045

Issued to Chien-fan CH'U

Issued by Ministry of Foreign Affairs, Canton, China

Date April 29, 1949

Valid until April 28, 1952

* * * * *

APPLICATION FOR IMMIGRATION VISA AND ALIEN
REGISTRATION

Full and True Name: Chien-fan CH'U Occupation: Engineer

* * * * *

The Names and Addresses of my Parents Are:

Mother: Hsao-chin LI Address: #132 Jin Hwa Jie, Taipei, Taiwan

Father: Chi-Chun CH'U Address: #74 Nan Chang St. Peiping

* * * * *

That since reaching the age of 14 years I have resided at the following places, during the periods stated, to wit:

1. Changsha, Hunan 1937-1938
2. Kunming, Yunnan 1938-1939
3. Chungking, Szechwan 1939-1946
4. Mukden 1946-1948
5. Peiping 1948-Nov. 1948
6. Taipei, Taiwan Nov. 1948-1949

That I am married and the name of my wife is Tuan Tieh Mei Ch'u who was born at Li Hsien, Hopeh and resides at #132 Jin Hwa Jie, Taipei, Taiwan.

That the names, dates of birth, and places of residence of my minor children are:

Pei Ping CH'U born August 18, 1948 living at #132 Jin Hwa Jie, Taipei, Taiwan

THE UNIVERSITY OF TEXAS
Office of the Registrar
Austin 12

February 22, 1949.

Mr. Chien-Fan Ch'u
c/o Mr. C. Y. Chen
151 Noyes Laboratory
University of Illinois
Urbana, Illinois

Dear Mr. Ch'u;

Your friend at the University of Illinois, Mr. C. Y. Chen, has sent me your record at National Central University in Nanking. It is an excellent one and I therefore have pleasure in sending you this letter of acceptance for admission to our graduate school for work in Chemical Engineering. Our Summer Session begins on June 1, 1949, the Long Session on September 15, 1949 and the second semester on February 1, 1950.

The registration and tuition fee for all nonresidents is \$150 per semester. The student activities fee is \$15 per session. There are also a few small fees, and every new student registering for the first time makes a property deposit of \$7. The cost of living in Austin is high just as it is elsewhere. The price of board and lodging ranges from \$45 or \$50 a month to \$85 or \$90 a month. Books and other materials cost around \$50 a semester. Then, there are incidentals, and their amount will depend upon your expertness in spending money.

Upon arrival, you should call on Mr. Joe Neal, Foreign Student Advisor, B Hall 9 The University of Texas. He will be glad to assist you.

Very truly yours,

/s/ E. J. Mathews

E. J. Mathews, Registrar
and Dean of Admissions

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Statement of Applicant for Extension of Stay

File No. A7 285 374

Sworn testimony given by Chien-Fan CHU before Immigrant Inspector
Raymond O. Hanson at Chicago, Illinois on January 21, 1952.

* * * * *

Q. How has the Communist occupation of China affected you and
the members of your family? A. My mother and my sister are in
Formosa and I believe my father is still on the mainland. He was a
general in the Nationalist and didn't get a chance to escape to Formosa
when the Communists came. I believe he has lost all of his property,
but I don't write to him because it might cause him trouble with the
Communists.

Q. Where do you intend to go at the expiration of the period of
your stay in the United States? A. In this situation I couldn't go any
place. I might be able to go to Formosa, but I wouldn't like to go back
there. I do not want to go back to the mainland of China while it is
under the communists.

* * * * *

IMMIGRATION AND NATURALIZATION
SERVICE
UNITED STATES DEPARTMENT OF JUSTICE
CHICAGO, ILLINOIS

Exhibit 8

File No. A7285374

Sworn statement of Chien-fan Chu
Before Clarence V. Perry, Immigrant Inspector at Chicago, Ill. on
March 5, 1953.

* * * * *

Q. From your previous statement it appears you spent all your
life in China, the United States and nine months in Formosa. It also
appears you last resided in Formosa. How did you happen to leave
China for Formosa prior to your entry into the United States as a student?

A. Because of the threatening Communist war situation I left China. I don't like the Communists.

Q. Where is your father? A. My father is in Peiping, China. However, my mother, my wife and my child, then under one year accompanied me to Formosa. My father felt this was best for the family. He had been a general in the Nationalist army and he was on duty with the Nationalist Army and could not leave his station even though the Communists were threatening. He was not with that part of the Nationalist Army which was able to escape to Formosa. My sister and her husband also went to Formosa with us.

Q. After nine months in Formosa you apparently left for the United States. What happened to your wife, child and mother? A. Student regulations prohibited my taking my family. I wanted to study in the United States but Formosa rules prevented my taking at that time my wife child and mother. My wife remained in Formosa till about the end of 1949 when she went to France as her only hope for eventually arranging to join me in the United States.

Q. Why didn't your wife take your child or mother with her? A. Since my sister and her husband and my mother were established in Formosa, and since traveling with a small child was difficult and since it was hard to get visas and entry permits we decided it would be simpler if my wife alone tried to join me. My wife was in France about 8 months then obtained a visitors visa to join me in the U.S. arriving Sept. 13, 1950.

Q. When have you last heard from your father? A. I have heard nothing directly from my father since we parted, however, thru friends we heard he is still in Peiping and still alive. We have no idea what he is doing.

Q. Does your family own any property in China? Particularly, do you own any property in China? A. We use to own a home in Peiping but have no idea of what has happened to it. I personally own nothing in China.

Q. Do you or your family own any property in Formosa? A. My sisters husband owns a house in Formosa where my mother and child live. My sister's husband is a general in the Nationalist Army. I personally own nothing in Formosa.

Q. What is your present immigration status? A. I finished my masters degree and temporarily discontinued school. Your Service put me in an indefinite status with permission to remain indefinitely and be employed. However, I am hoping to study further nights for a Ph. D.

Q. Where are you employed and in what capacity? A. Richardson Company, manufacturers of plastic moulding, where I hold the position of chemical engineer--chemist.

Q. Does this work involve any classified, restricted or secret work? A. No. My work is for civilian purposes.

Q. Do you wish to return to Formosa or China at this time? A. No, because I wish to study further when my economic conditions permit. Since I have a child born in this country I must work to support my wife and child here.

Q. Do you have a bank account in the United States? A. I have no savings. It took a great deal of my money for study and arranging to get my wife here.

Q. What degree do you hold---in what field do you specialize? A. I have a masters degree in Chemical Engineering. I am a chemist.

Q. In the event you were requested to leave the United States to what country would you go? A. I prefer to return to a free Republic China---where my home was most of my life.

Q. In the event China is not a free, republic but a communist dominated country at the time you are requested to leave where would you go if ordered to depart? A. I prefer to stay in the United States, but if forced to leave I would go to Formosa.

Q. Do you have a permanent domicile in Formosa--that is can your brother-in-laws home where your mother and child reside be available to you should you return to Formosa? A. I don't consider

Formosa my permanent domicile since I resided there only nine months and none of our family really consider it a permanent domicile since we hoping to return to free China.

Q. If Formosa is regarded from the facts you have given as your permanent domicile by this Service, could you return to that country without undue difficulty, in your opinion? A. I would have to get permission to enter from the Formosa Govt. I would have no security for my family in Formosa. It is overcrowded and jobs in my field would be difficult to obtain. My family in Formosa advise me not to return to Formosa because they consider their stay there temporary; they hope to return to China. I do not have money for a ticket for myself, my wife and child born here. I don't know how I'd find a place to live there.

Q. Have you anything further you wish to say concerning the matters covered by this statement? A. No, only I wonder if the fact I have a citizen child born here affords me any relief permitting me to remain here. I wish my child to have an American education and I certainly would not want to be separated from her. As a citizen I understand she may remain here, but again I would not want to separate her at such a young age from her myself and her mother.

Subscribed and sworn to before me, Clarence V. Perry, Immigrant Inspector, at Chicago, Illinois on March 5, 1953.

/s/ Chu, Chien-Fan

/s/ Clarence V. Perry
U. S. Immigrant Inspector

Exhibit 24

Name: CHU nee TUAN Tien Mei Occupation: Student
Home Address: 44 rue des Bernardins, Paris, France
Date and Place of Birth: April 17, 1928 at Pekin, China, Female, Married.
Hair: Black Eyes: Brown Height: 4'7" Nationality: Chinese
Race: Chinese
Marks: None

Date in U.S. Before: Never

Name and Address of Nearest Relative at Home: Mr. Tuan, 3 Kan Sui
Chiao, Pekin, China

Purpose and Length of Intended Stay in U.S.: on visit 6 months

Name and Address of Person to Whom Destined: Mr. Chu Chien Fan,
1126 E. Corham Street, Madison, Wisconsin

Travel Documents: Chinese Passport No. 336895 - 12 issued at Paris,
France on Aug. 28, 1950 & valid until Aug. 27, 1953.

Date and Place of Admission to U.S. and Name of Vessel: Q. Mary
9-13-50

Date to Which Admitted: 3-12-51

This document, when signed by a U.S. Immigrant Inspector, is evidence that the aliens named herein are registered under the alien registration act, 1940. You must report your address while in the U.S. to the Immigration and Naturalization Service, Washington, D.C. every 3 months. When reporting, give your name and the number on the other side of this document.

/s/ B.S.I.

U.S. Immigrant Inspector

0300-354515

[SEAL of U.S. Dept. of Justice, Immigration and Naturalization Service]

No. 315326

Chicago, Illinois, June 18, 1952.

Application for extension of stay denied. Permitted to remain in
the United States in accordance with the provisions of O.I. 150 X

/s/ R. W. Dusha

U.S. Immigration Officer

To July 24, 1952

/s/ R. O. Hanson

U. S. Immigration Inspector

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Statement of Applicant for Extension of Stay

Sworn testimony given by Tieh-Mei Tuan CHU before Immigrant Inspector
T. J. Mason at Milwaukee, Wis. on February 23, 1951.

* * * * *

Q. How has the Communist occupation of China affected you and
the members of your family? A. My father, Tuan, Tsung-Lin, retired
official of the Nationalist government owned property in China which
the Communists have taken.

Q. Where do you intend to go at the expiration of the period of
your stay in the United States? A. Formosa.

* * * * *

/s/ Chu Tuan Tieh-mei
Applicant

Subscribed and sworn to before me
at Milwaukee, Wis., on Feb. 23, 1951

/s/ T. J. Mason,
Immigrant Inspector

Immigration and Naturalization Service Exhibit 28
United States Department of Justice
Chicago, Illinois

File No. 0900/9241

Sworn statement of Tieh-Mei Chu

Before Clarence V. Perry, Immigrant Inspector at Chicago, Illinois on
March 5, 1953.

Officer to Deponent: What language do you speak and understand?

A. English and Chinese

Examination conducted in the English language.

Officer to Deponent: You are informed that I am an Officer of the United
States Immigration and Naturalization Service and authorized by law
to administer oaths in connection with the enforcement of the Immigration
Law. I desire to question you concerning your right to enter, reenter,

pass through or reside in the United States. Any statement which you make should be voluntary and you are hereby warned that such a statement may be used against you either in criminal or deportation proceedings. Do you understand? A. Yes.

Q. Are you willing to make the statement or answer questions under these conditions? A. Yes.

Officer to Deponent: Please stand, raise your right hand and be sworn. Do you solemnly swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, So Help You God? A. Yes.

Q. What is your full and true name? A. Tien Mei Chu.

Q. What other name or names have you ever used or been known by? A. Before I was married: Tieh Mei Tuan. I sometimes used the English name Esther.

Q. When and where were you born and of what country are you a citizen? A. April 17, 1928 at Peiping, China---citizen of China.

Q. What are the dates and places of your foreign residence?
A. All my life in China until I went to Formosa with my husband in Nov. 1948. I left Formosa for France in August of 1949 for France. I lived in France only nine months as I spent five months in Hong Kong prior to my departure to France.

Q. Did you ever serve in the armed forces of any country? If so, when and in what forces? A. No.

Q. Were you ever employed in a civilian capacity by any foreign government? If so, name the position and the country and tell when you were employed. A. No.

Q. Apparently you lived all your life in China except for the trip to Formosa, France and the United States. How did you happen to leave China for Formosa. A. I went with my husband who has told you about it. We left because the Communists were coming.

Q. Where do your father and mother live? A. They live in Peiping, China.

Q. How many children do you have? A. Two.

Q. Where are your children? A. One is born in the U.S. and is with me. The other is in Formosa with my mother-in-law and my sister-in-law and brother-in-law.

Q. How did you happen to leave your child when you went to France? A. I wanted to join my husband--we did not have the money nor did we feel the young child could take well such a long journey. The boy was in good hands with his grandmother and uncle and aunt. It was the only way I could find to join my husband.

Q. Why did you go to France? A. I really wanted to join my husband. While waiting in Hong Kong for a chance to get out I found it impossible to easily obtain a U.S. visa and passport. I saw a chance to travel with friends from Hong Kong to France, where I hoped I could more easily arrange to come to the United States to be with my husband. After nine months there I obtained a visitors visa for the United States and joined my husband here in Sept. of 1950.

Q. When have you heard last from your parents in China? A. About a year and half ago we heard indirectly that they are living and apparently well.

Q. Do your parents own property in China? A. They had a home the last we heard. My father was a railroad employee.

Q. What is your present immigration status in the U.S. as you understand it? A. I came as a visitor to join my husband a student here. When I last applied for an extension I told the immigration man I had US citizen child and would like to remain here permanently if there was any legal method which would permit it. Then your Service sent me a letter telling me I could remain indefinitely and be employed if necessary without making new extensions of stay. I report every three months.

Q. If your right to remain indefinitely is withdrawn and you are requested to leave the United States now where would you go? A. I would go wherever my husband goes. I know he made a statement to you earlier about this today. I don't know what he said, but I would go with him.

Q. If this Service regards your last residence in Formosa as your permanent domicile, could you return to that country without undue difficulty? A. No--I could not return without difficulty because documents to Formosa hard to get--my mother-in-law and sister-in-law tell me it is better to remain here--we don't where we would live in Formosa. My husband tells me it would be hard for him to get money for the travel and also hard to find work there. We have a citizen of this country child who we would like to educate here.

Q. Have you anything further you would like to state concerning the subject of this statement? A. I want to be with my husband.

Subscribed and sworn to before me at Chicago, Illinois on March 5, 1953.

/s/ Tieh-mei Chu

Deponent

/s/ Clarence V. Perry
Immigrant Inspector

Exhibit 29

RECORD OF HEARING BEFORE A
BOARD OF SPECIAL INQUIRY HELD AT
ELLIS ISLAND, New York Harbor, N. Y.

Date: September 13, 1950 9:35 AM

Present: Insp. R. H. Danielson, Chmn.
J. R. Constantine

Secy-Member Arthur P. Fairbanks
Int. K. S. Moy, Chinese

Names of Aliens: CHU TUAN TIEH MEI
21 F China Chinese

0300/354515

B.S.I. No. APF-95 DEF APF-86 9/12/50 POE Cherbourg 9/7/50
Arrived (date and manner): SS Queen Mary, Cunard White Star 9/12/50
Held by: W. Moriarty Cause: 13(a)(1)

FINDINGS OF FACT:

- 1) that you are an alien, a native and citizen of China;
- 2) that you last arrived in the United States as a passenger at the Port of New York on the SS Queen Mary on September 12, 1950 embarking at Cherbourg, France September 7, 1950;

- 3) that you are an applicant for admission to the United States for a temporary period of about six months to visit your husband who is here as a student;
- 4) that you are in possession of Chinese passport valid to August 27, 1953;
- 5) that you are in possession of nonimmigrant visa issued under Section 3(2) of the Immigration Act of 1924;
- 6) that you are in possession of sufficient funds to maintain you while you are here; and pay for your transportation from the United States;
- 7) that you state that you will depart from the United States to either France or Formosa you now being in possession of permission to return to France valid to March 30, 1951 and permission to return to Formosa at any time;
- 8) that your husband has been lawfully admitted to the United States as a nonquota immigrant student and is presently here under an extension of that status valid to July 1951;
- 9) that no evidence has been adduced to indicate that you are inadmissible to the United States;

CONCLUSIONS OF LAW: that you are admissible to the United States as a nonimmigrant visitor under Section 3(2) of the Immigration Act of 1924.

ADMITTED BY BSI: 3(2) Vis for P1 to March 12, 1951.

Dest: C/o Chu Chien Fan, 1126 East Gorham, Madison, Wisc.

10:05 AM notes not transcribed.

Exhibit 43

Headquarters
Command & General Staff School
Chinese Training Center
United States Forces
China Theater

A. P. O. 627
8 Sept 1945

SUBJECT: Commendation.

TO: Chu Chien-Fan, FAB No. 1428.

1. Upon the deactivation of this school after eighteen months of operation, I wish to take this opportunity of expressing to you, the appreciation of myself and the entire American personnel of this school for the superior manner in which you have performed your duties as an interpreter at this institution.

2. With total service of 7 months you have served in the FAB, and also at the Command and General Staff School since 7 April 1945, you have continually displayed the highest of soldiery qualities during that time. Your cooperation and loyalty to your country and the Americans with whom you have been working are attested to by the high standard this school has attained despite difficulties of language and custom in highly specialized work.

3. I regret that the time has arrived for us to part, but we do so in the knowledge that our work here has contributed in large measure to the great victory over our common enemy, and that now our two nations may go forward together in the reconstruction of the world and the establishment of universal peace. I shall ever look forward to meeting you again either in China or in the United States. All American personnel join with me in saying, "Thank you for a job well done."

4. A copy of this commendation will be forwarded to the FAB.

/s/ Elbert W. Martin

Colonel, FA Commandant

**HEADQUARTERS
UNITED STATES FORCES
CHINA THEATER**

Chungking, China

SUBJECT: Release of Interpreting Officers from duty with the
United States forces in China.

TO: Interpreting Officer Chu Chien Fan

FAB No. 1428.

1. On the termination of your duty as an Interpreting Officer with the United States Forces in China the Commanding General, United States Forces in China desire to thank you for a splendid job well done.

2. Without Interpreting Officers the mission of the United States Forces in China would have been seriously hampered. The handiwork done by the Interpreting Officers has materially aided in accomplishing this mission, and has helped to cement friendly relations between the peoples of the United States and China.

3. It is hoped that you will continue your good work in the future, as in the past, and help to build China into the great nation it deserves to be.

BY COMMAND OF LIEUTENANT-GENERAL WEDEMEYER:

/s/ Sylvio L. Bousquin

Lt. Col., AGD

Asst. Adj. General

CERTIFICATE

This certifies that Interpreting Officer Chu Chien Fan FAB Number 1428 has been honorably released from duty with the United States Forces in China on 22 September 1945.

/s/ Harry R. Smith

Lt. Col., Inf.

Officer in Charge, Interpreter
Affairs, China Theater

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
NORTHWEST REGIONAL OFFICE
790 Cleveland Avenue South
St. Paul 5, Minnesota

July 22, 1955

Files: A7 285 374
V-315326 - (Chicago)

In re: CHU, CHIEN FAN
CHU, TIEH MEI

PROCEEDINGS UNDER SECTION 6 OF THE REFUGEE RELIEF ACT
OF 1953 AS AMENDED

IN BEHALF OF APPLICANTS: No one

APPLICATION: Adjustment of immigration status

DISCUSSION: The applicants in this proceeding are husband and wife, both natives and citizens of China. The male applicant last entered the United States at the port of Honolulu, Hawaii on August 24, 1949 as a student under Section 4(e) of the Act of May 26, 1924. The female applicant last entered the United States at the port of New York, New York on September 13, 1950 and was admitted as a temporary visitor for a period of six months. Both applicants have remained in the United States continuously since the date of their admission.

Both aliens applied for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953, as amended. On December 10, 1954 a Special Inquiry Officer recommended that the aliens' applications for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953, as amended, be denied for the reason the aliens were able to return to the country of their last residence. Exceptions were filed to the recommended decision and on February 25, 1955, after careful consideration of the entire record, the Acting Regional Commissioner, Northwest Region, approved the recommended denial of adjustment of immigration status for the reason that both aliens were able to return to the country of their last residence, Formosa.

A motion has now been submitted for reconsideration of the Acting Regional Commissioner's decision. This motion alleges:

- "(1) That Formosa cannot, under the facts of the case, be considered in any sense the last permanent residence of the applicants, and
- "(2) Formosa can only be considered as a refuge for thousands of Chinese in the same sense as West Germany is a refuge for Eastern Germans, etc., and hence Chinese who have been forced to flee from the mainland because of political opinion and at present reside on Formosa should be entitled to relief under the Refugee Relief Act, provided their applications are timely so as to permit them to enter under the special quota system which has been provided in the Act."

The particular points raised in the motion will be considered in reverse. Insofar as item (2) is concerned, it is rejected as each case must be considered on its individual merits and cannot be adjudicated on the over-all theory that Formosa is the refuge for all Chinese forced to flee from the mainland. In considering item (1) it is conceded that both applicants were residents on the mainland of China until November of 1948, at which time they went to Formosa accompanied by their minor child and the male applicant's mother, sister and brother-in-law. Due to the connections of this family with the Chinese Nationalist Army they were apparently able to anticipate the eventual outcome of the military struggle and were therefore able to reach Formosa and settle in advance of the general exodus of Chinese persons from the mainland. The male applicant's brother-in-law is a General in the Chinese Army and apparently owns the family home on Formosa. This may be established by testimony and by referring to the application for the student visa wherein he listed his last permanent residence as #132 Jin Hwa Jie, Taipei, Taiwan, China. He listed his mother, Hsao-chin Li, his wife Tuan Tieh Mei Ch'u and his minor child, Pei Ping Ch'u as all residing at the same address. This in itself would indicate to the Consular

Service that the applicant's entire family was reasonably well established at one central point and would tend to establish the temporary nature of the applicant's visit to the United States. In regard to the female applicant it is noted that upon her arrival at New York on September 13, 1950 that she made no claim to be other than a resident of Formosa and stated that she had permission to return there at any time. The applicant's child is still residing on Formosa and cared for by the male applicant's mother and sister.

In determining residence within the meaning of the Act it is apparent that both applicants could have remained on Formosa for as long as they desired. They have proper Chinese passports and no restrictions were placed on their movements while on the Island. They have other and important members of their family permanently residing in that country who are certainly self-supporting and not under the sponsorship of any relief organization. There is no persecution on Formosa nor should either applicant fear persecution on account of race, religion or political opinion. They are not stateless and they certainly have a roof over their head and a haven to which they can repair should they so desire. It is reasonable to conclude that had these persons not obtained visas permitting them to enter the United States temporarily, they would still be on Formosa. In this case there are present definite elements of permanency and firm resettlement on Formosa, and therefore, it will be considered the country of their last residence.

ORDER: IT IS ORDERED that the motion for reconsideration of the Regional Commissioner's Order denying adjustment of status under Section 6 of the Refugee Relief Act of 1953, as amended, be denied.

/s/ C. T. Remington
Acting Regional Commissioner
Northwest Region

15
BRIEF FOR APPELLEE

IN THE
United States Court of Appeals
For the District of Columbia Circuit

—
No. 13,643
—

CHIEN FAN CHU, and TIEH MEI CHU, *Appellants*,

v.

HERBERT BROWNELL, JR., The Attorney General for the
United States, *Appellee*.

—
Appeal from the United States District Court for the
District of Columbia
—

OLIVER GASCH,
United States Attorney.

LEWIS CARROLL,
DONALD E. BILGER,
*Assistant United States
Attorneys.*

United States Court of Appeals
For the
District of Columbia Circuit

FILED MAR - 5 1957

Joseph W. Stewart
CLERK

QUESTIONS PRESENTED

Appellants are husband and wife, natives and citizens of China, who were admitted to the United States on non-immigrant visas. In 1949 both left the mainland of China to reside on the island of Formosa. Some nine months later, the male appellant came directly to this country to enroll in an American university for advanced study in the field of engineering, the female appellant joining her husband, by way of Hong Kong and France, in September, 1950. Both aliens have remained continuously in the United States since their respective initial entries, and both applied for adjustment of immigration status under the provisions of the Refugee Relief Act of 1953. In each case, an administrative determination adverse to the alien involved was made. Complaint for a declaratory judgment was filed in the District Court, and the Government answered. Cross-motions for summary judgment were filed, resulting in the granting of appellee's motion and denial of appellants'. Both appellants noted an appeal.

In the opinion of the appellee, the following questions are presented:

1. Whether administrative criteria formulated to resolve questions of alien eligibility under the provisions of Section 6 of the Refugee Relief Act of 1953 are consistent with legislative intent and provisions of the applicable statute.
2. Whether the administrative determination that appellants' last residence within the meaning of Section 6 of the Refugee Relief Act of 1953 was so clearly arbitrary as to require reversal as a matter of law.

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IN THE
United States Court of Appeals
For the District of Columbia Circuit

No. 13,643

CHIEN FAN CHU, and TIEH MEI CHU, *Appellants*,

v.

HERBERT BROWNELL, JR., The Attorney General for the
United States, *Appellee*.

Appeal from the United States District Court for the
District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellants are husband and wife, both natives and citizens of China. In November, 1948, both appellants left the mainland of China to reside on the island of Formosa assigning as the reason therefor the civil war then raging upon the mainland (J.A. 25, 30). The male appellant entered the United States at the port of Honolulu, Hawaii, on August 24, 1949, as a student under Section 4(e) of the Immigration Act of May 26, 1924, listing Formosa as his place of last residence upon the immigra-

tion visa and his application to adjust his immigration status under Section 6 of the Refugee Relief Act of 1953 (J.A. 20, 22, 36). The female appellant last entered this country at the port of New York, New York, on September 13, 1950, being admitted as a temporary visitor for a period of six months under the provisions of Section 3(2) of the 1924 Act (J.A. 36). This appellant left Formosa in August, 1949, remained in Hong Kong for some five months, and then spent nine months in France prior to her visit to the United States (J.A. 30). Both appellants have remained in the United States continuously since the dates of their admissions (J.A. 36).

Pursuant to the appellants' applications for adjustment of immigration status under the provisions of Section 6 of the Refugee Relief Act of 1953, a hearing was afforded which resulted on December 10, 1954, in a recommendation of denial by the Special Inquiry Officer (J.A. 36). Exceptions were filed to the recommended decision, and on February 25, 1955, after careful consideration of the entire record, the Acting Regional Commissioner, Northwest Region, approved the recommended denial of adjustment of immigration status on the ground that both aliens were able to return to the country of their last residence, Formosa (J.A. 36). A motion for reconsideration was filed, and on July 22, 1955, the Acting Regional Commissioner, Northwest Region, filed an order denying the motion (J.A. 36). The motion alleged (1) that Formosa could not be considered the last permanent residence of appellants, and (2) that Formosa could only be considered as a refuge for thousands of Chinese in the same sense as West Germany is a refuge for Eastern Germans and others. The Commissioner's opinion assigned the following reasons for denial of the motion:

... it is conceded that both applicants were residents on the mainland of China until November of 1948, at which time they went to Formosa accompanied by their minor child and the male applicant's mother, sister and brother-in-law. Due to the connections of this family with the Chinese Nationalist Army they were apparently able to anticipate the eventual outcome

of the military struggle and were therefore able to reach Formosa and settle in advance of the general exodus of Chinese persons from the mainland. The male applicant's brother-in-law is a General in the Chinese Army and apparently owns the family home on Formosa. This may be established by testimony and by referring to the application for the student visa wherein he listed his last permanent residence as # 132 Jin Hwa Jie, Taipei, Taiwan, China. He listed his mother, Hsao-chin Li, his wife, Tuan Tieh Mei Ch'u and his minor child, Pei Ping Ch'u as all residing at the same address. This itself would indicate to the Consular Service that the applicant's entire family was reasonably well established at one central point and would tend to establish the temporary nature of the applicant's visit to the United States. In regard to the female applicant it is noted that upon her arrival at New York on September 13, 1950, that she made no claim to be other than a resident of Formosa and stated that she had permission to return there at any time. The applicant's child is still residing on Formosa and cared for by the male applicant's mother and sister.

In determining residence within the meaning of the Act it is apparent that both applicants could have remained on Formosa for as long as they desired. They have proper Chinese passports and no restrictions were placed on their movements while on the Island. They have other and important members of their family permanently residing in that country who are certainly self-supporting and not under the sponsorship of any relief organization. There is no persecution on Formosa nor should either applicant fear persecution on account of race, religion or political opinion. They are not stateless and they certainly have a roof over their head and a haven to which they can repair should they so desire. It is reasonable to conclude that had these persons not obtained visas permitting them to enter the United States temporarily they would still be on Formosa. In this case there are present definite elements of permanency and firm resettlement on Formosa, and therefore, it will be considered the country of their last residence.

On December 6, 1955, appellants filed a complaint for declaratory judgment which prayed for a declaration that Formosa could not be regarded as appellants' last residence within the meaning of Section 6 of the Refugee Relief Act of 1953, in the United States District Court for the District of Columbia (J.A. 1). The Government answered on January 5, 1956, and on September 12, 1956, moved for summary judgment (J.A. 3, 5). Appellants cross-moved for summary judgment on September 21, 1956 (J.A. 6). On October 23, 1956, the Government's motion for summary judgment was granted and appellant's motion denied (J.A. 14). Notice of appeal was filed on November 13, 1956 (J.A. 14a).

STATUTES INVOLVED

Section 2(a), Refugee Relief Act of 1953, 50 U.S.C. 1971 (a), 67 Stat. 400

"Refugee" means any person in a country or area which is neither Communist nor Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life or for transportation.

Section 2(b), Refugee Relief Act of 1953, 50 U.S.C. 1971 (b), 67 Stat. 400

"Escapee" means any refugee who, because of persecution or fear of persecution on account of race, religion, or political opinion, fled from the Union of Soviet Socialist Republics or other Communist, Communist-dominated or Communist-occupied area of Europe including those parts of Germany under military occupation by the Union of Soviet Socialist Republics, and who cannot return thereto because of fear of persecution on account of race, religion or political opinion.

Section 6, Refugee Relief Act of 1953, 50 U.S.C. 1971(d), 67 Stat. 403, provides in pertinent part:

Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant and that because of events which have occurred subsequent to his entry into the United States he is unable to return to the country of his birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may within one year after the effective date of this Act [August 7, 1953], apply to the Attorney General of the United States for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that the alien was physically present in the United States on the date of the enactment of this Act [August 7, 1953] and is otherwise qualified under all other provisions of the Immigration and Nationality Act [chapter 12 of Title 8] except that the quota to which he is chargeable is oversubscribed, the Attorney General shall report to the Congress all the pertinent facts in the case. If, during the session of the Congress in which a case is reported or prior to the end of the session of the Congress next following the session in which a case is reported, the Congress passes a concurrent resolution stating in substance that it approves the granting of the status of an alien lawfully admitted for permanent residence to such alien, the Attorney General is authorized, upon the payment of the required visa fee, which shall be deposited in the Treasury of the United States to the account of miscellaneous receipts, to record the alien's lawful admission for permanent residence as of the date of the passage of such concurrent resolution. If, within the above specified time, the Congress does not pass such a concurrent resolution, or, if either the Senate or the House of Representatives passes a resolution stating in substance that it does not approve the granting of the status of an alien lawfully admitted for permanent residence, the Attorney General shall thereupon deport such alien in the manner provided by law.

Section 15, Refugee Relief Act of 1953, 50 U.S.C. 1971(m), 67 Stat. 406

Except as otherwise expressly provided by this Act (sections 1971-1971q of this Appendix) all of the provisions of the Immigration and Nationality Act (chapter 12 of Title 8) shall be applicable under this Act.

Section 291, Immigration and Nationality Act of 1952, 8 U.S.C. 1361, provides in pertinent part:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant, quota immigrant, or nonquota immigrant status claimed, as the case may be . . .

SUMMARY OF ARGUMENT

Each appellant, after receipt of his application for adjustment of status under the provisions of Section 6 of the Refugee Relief Act of 1953, received a fair and impartial hearing at which careful consideration was given to all evidence adduced. Review of the respective adverse decisions was afforded each appellant, and further consideration was given in response to a motion for reconsideration.

Although the express language of Section 6 of the Act does not require Service consideration of "firm resettlement" and authority exists for disregarding the element of alien intent with respect to last residence, the standard criteria utilized in the instant case to determine place of last residency fully complied with legislative intent and statutory directives.

Appellants bear the burden of proving their eligibility for the benefits of Section 6 of the Act, and an administrative finding that they are not eligible may only be reversed

upon a judicial determination that agency action is not supported by a rational basis in the evidence or is the result of an error of law. The facts here are ample to sustain the finding that Formosa was appellants' last residence within the meaning of Section 6 of the Refugee Relief Act of 1953.

ARGUMENT

I.

The Administrative Criteria Utilized in Determining Alien Eligibility Under the Provisions of Section 6 of the Refugee Relief Act of 1953 Are Consistent With Legislative Intent and Provisions of the Applicable Statute.

Appellants ask this Court to reverse the judgment of the District Court, granting summary judgment to the Government with denial of a similar motion made in behalf of appellants, and to grant their motion for summary judgment. The complaint below prayed for a judgment declaring that in considering the application of appellants for the benefits of Section 6 of the Refugee Relief Act of 1953, Formosa should not be regarded as appellants' country of last residence within the meaning of the Act. The issue turns then upon administrative determinations that appellants' last residence was Formosa and not the mainland of China, and that appellants had failed to establish that they were unable to return there for any of the prescribed reasons. Appellants urge that the Immigration Service should interpret Section 6 of the Refugee Relief Act of 1953 as though it read, with respect to residence, as does Section 2(a) of the Act. In addition, both appellants erroneously assume that the Service failed to consider the element of intent in determining residence.

Initially, a mere reading of the Act emphasizes the deliberate selection of dissimilar language.¹ Section 2(a),

¹ Section 2(a) of the Refugee Relief Act of 1953 provides:

"Refugee means any person in a country or area which is neither Communist nor Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly

administered by the Department of State, speaks of "refugee" as contrasted with "alien" in Section 6. Section 2(a) does not mention the word "residence", confining its terms to "usual place of abode." Section 6, on the other hand, uses only the definitive phraseology "country of his birth, or nationality, or last residence." In addition, Section 2(a) adds two criteria not found in Section 6; i.e., in order to be eligible for benefits under Section 2(a) a refugee must not have been "firmly resettled" and must be in "urgent need of assistance for the essentials of life or for transportation." Nevertheless, appellants seek equation in application of the two sections.

Nowhere in the Refugee Relief Act is the word "residence" as used in Section 6 defined. Nor is it explained under the former regulation 8 C.F.R. § 481 or the current regulation 8 C.F.R. § 245(a). The Department of State, however, in administering Section 4(a) promulgated 22 C.F.R. § 44.1(o), which provides:

"Reside" and "Residing", as used in Section 4(a) of the act, shall have the meaning ascribed to the term "residence" as defined in section 101(a)(33) of the Immigration and Nationality Act.

Section 101(a)(33) of the Immigration and Nationality Act provides in pertinent part:

The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

resettled, and who is in urgent need of assistance for the essentials of life or for transportation.

Section 6 of the Refugee Relief Act of 1953 provides in pertinent part:

Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant and that because of events which have occurred subsequent to his entry into the United States he is unable to return to the country of his birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may within one year after the effective date of this Act, apply to the Attorney General of the United States for an adjustment of his immigration status . . .

In addition, since Section 2(a) of the Refugee Relief Act defines the term "refugee" as a prescribed person "out of his usual place of abode and unable to return thereto", the Department of State adopted 22 C.F.R. § 44.1(a), which currently reads:

"Usual place of abode", as used in section 2(a) of the Act, means the applicant's principal, actual dwelling place in fact, without regard to intent, to which he is unable to return because of fear of persecution, natural calamity, or military operations, or because of the consequences of a natural calamity or military operations.

In view of Section 15 of the Refugee Relief Act,² some sanction appears to be given to the Department of State definitions. The Immigration Service, however, concluded that strict application of the residence formula of Section 101(a)(33) of the Immigration and Nationality Act might disqualify some aliens under Section 6 of the Refugee Relief Act although their last foreign residence was temporary or even involuntary, a situation felt to be inconsistent with congressional intent. Accordingly, after some differences in interpretation of procedural criteria among the several immigration districts, Service policy crystallized into a firm, somewhat liberal, non-exclusive list of factors considered to be material in determining an alien's country of last foreign residence. The list includes:³

1. Length of sojourn
2. Terms of admission or later modification thereof
3. Activities while in the intervening country

² Section 15 of the Refugee Relief Act of 1953 provides in pertinent part:

Except as otherwise expressly provided by this Act . . . all of the provisions of the Immigration and Nationality Act . . . shall be applicable under this Act . . .

³ See I.D. No. 95, cited in Appellants' Brief at p. 9. As a convenience to the Court, we have printed this decision as a supplement to the Government's brief. The list referred to above is contained in the supplement at p. —.

4. Intent of the applicant
5. Travel documents possessed by the applicant
6. Ability to return to the intervening country under the existing regulations of that country
7. The presence in the intervening country of other members of the applicant's family
8. Restrictions placed upon the applicant by regulations of the intervening country
9. Whether or not the applicant was the constant charge of social or humane organizations in the intervening country
10. The intervening country's policy with respect to displaced persons, refugees or other aliens, and
11. The intervening country's attitude with respect to applicants of particular religious, racial or political affiliations

Without need of substantiating argument, these same factors clearly comprise the major elements necessarily considered in resolving the meaning of "firm resettlement" under Section 2(a) of the Refugee Relief Act. Indeed, the Immigration Service weighs subjective intent as indicia of residence, a concept not found in Department of State regulations. In the instant case, notwithstanding appellants' allegation to the contrary, intent was a considered element, and this is so even though both appellants indicated in writing, prior to the passage of the Refugee Relief Act, a residence utterly inconsistent with the contention now proffered as an after-the-fact subjective evaluation. Accordingly, although "last residence" in Section 6 of the Act is not statutorily amplified by the explanation "not firmly resettled," the net effect of Service policy is provision to the alien applicant of the "firm resettlement" benefits found in Section 2(a). In other words, assuming that the legislative purpose of the Refugee Relief Act as an entity is permitted immigration of certain otherwise eligible refugees who are out of their usual place of abode, unable to return thereto, and who have not been firmly re-

settled, should an alien applicant under Section 6 be classifiable as a refugee under Sections 2 and 4 if he resided outside the United States, the Service yardstick used for measuring the character of his last foreign residence affords him equation of residence measurement between Section 2(a) and 6, effectively providing equality of treatment not dependent upon physical presence within or without this country.⁴ And this is so even though the express terminology of Section 6 does not require such liberality. It is submitted, therefore, that Service execution of congressional policy in administration of Section 6 of the Refugee Relief Act of 1953 as applied to appellants was consistent with legislative intent as well as the express provisions of the statute.

II.

The Administrative Determination That Appellants' Last Residence Within the Meaning of Section 6 of the Refugee Relief Act of 1953 Was Formosa and Not the Mainland of China Is a Rationally Sustainable Conclusion Properly Based Upon the Facts.

Appellants' remaining complaint attacks as arbitrary and capricious the finding that Formosa was the country of last residence. Even assuming, they argue, that the Immigration Service applied the correct legal test of residence, the finding is not justified by the evidence, and the erroneous result is high-lighted by the "fact that they studiously ignored the plain evidence as to the purpose and intent of appellants' sojourn on Formosa."

Appellants characterize the nature of the hearings they received as "sketchy" although neither points to even an isolated instance wherein answers were throttled or explanations minimized. To the contrary, the record indicates that both appellants were given every opportunity to

⁴ The opinion of the Acting Regional Commissioner, denying appellants' motion for reconsideration of the denial of adjustment of status under Section 6 of the Act, contains the following statement:

In this case there are present definite elements of permanency and *firm resettlement* on Formosa, and therefore, it will be considered the country of their last residence (J.A. 38). (Emphasis supplied).

express their views and clarify their positions. The sworn statements reveal that each appellant was asked, for example, at the conclusion of the hearing if he had anything further he wished to add (J.A. 27, 32). In the same vein falls the statement that appellants "were not represented by counsel" during the initial hearings. Such representation is, of course, accurate, but appellants fail to add that such a situation was their deliberate choice, each having been advised of the right to counsel. No merit attaches to either unsupported and unwarranted innuendo.

Because of the notation "Approval and so ordered" placed upon the Special Inquiry Officer's finding by the Acting Regional Commissioner of the Northwest Region, appellants erroneously assume and allege that the approval was of the "rubber stamp" variety. Yet the record contains a statement by the Acting Regional Commissioner that "careful consideration" was given to the entire record in approving the recommended decision (J.A. 36). Appellants point to no requirement that a reviewing officer render a written opinion, nor, indeed, can they. Administrative consideration of appellants' contentions did not, however, stop at this point. A motion was made in their behalf to reconsider the reviewing officer's decision, alleging (1) that Formosa could not be considered in any sense the last permanent residence of appellants, and (2) that Formosa could only be considered as a refuge for thousands of Chinese in the same sense as West Germany is a refuge for Eastern Germans. Again, review of appellants' case was granted, and the record and allegations were exhaustively treated. On July 22, 1955, the motion for reconsideration was denied (J.A. 36-38). Throughout this period, appellants were represented by counsel, and raised no issue with respect to unfair or improper procedures.

Before considering appellants' factual situations as measured by Service policy criteria, it is helpful to note the scope of judicial review. Administrative agency findings and conclusions, to be set aside as unlawful, must be

found arbitrary, capricious or an abuse of discretion, but an agency's action is deemed to be such only if unsupported by a rational basis in the evidence or is the result of an error of law. *United States ex rel. Beck v. Neelly*, 202 F. 2d 221, 223 (7th Cir. 1053), *cert. denied*. 345 U.S. 997. Applying this standard, the administrative determinations below are not such as to require reversal.

Appellants concede that they could return to Formosa at any time, and that they fear no persecution for any reason there. Admittedly also, the male appellant's mother, sister and brother-in-law reside in Formosa. In addition, a child born to appellants in Peiping, China, now lives with these relatives on Formosa and has done so since a very tender age. This son is now eight years old. Appellants apparently do not dispute that the male appellant's brother-in-law is a Lieutenant General in the Nationalist Army on Formosa and owns the home there in which the aforesaid relatives reside. Further, the male appellant listed Formosa as his last permanent residence in his application for a student visa, naming his mother, wife and child as all residing at the same address. Reasonably, this indicates that his family was established at one central point and tended to establish the temporary nature of his visit to the United States. The female applicant made no claim to be other than a resident of Formosa upon her arrival at New York on September 13, 1950. Although appellants now insist that they in nowise intended such fixing of last residence according to its plain meaning, the fact that each listed Formosa as his last permanent residence cannot be conveniently overlooked upon the sheer basis of an after-the-fact subjective representation that the now-questioned entries were misunderstood. Both appellants have proper Chinese passports and no restrictions were placed upon their movements while on Formosa. Neither was assisted while there by any relief organization, and other and important family members reside permanently upon the Island in a self-supporting capacity. Appellants do not claim persecution on Formosa for any reason should they return, as admittedly

they could, nor do they question the finding that they are not stateless and have a haven to which they can repair should they so desire. The Service found also that it is "reasonable to conclude that had these persons not obtained visas permitting them to enter the United States temporarily, they would still be on Formosa" (J.A. 38). These facts, the majority of which are freely admitted by appellants, amply sustain the finding complained of here. Particularly is this true in view of the burden of proof carried by alien applicants under the provisions of the Refugee Relief Act.⁵ Section 15 of the Act refers to the Immigration and Nationality Act of 1952, making its provisions applicable to Refugee Relief Act except as otherwise specifically provided. Inasmuch as Section 291 of the Immigration and Nationality Act places the burden of proof upon an applicant to establish eligibility, appellants cannot now reasonably complain of evidentiary in-

⁵ Legislative intent with respect to burden of proof is clarified by the following passage found at page 10,386 of the Congressional Record, 83d Cong., 1st Sess., July 28, 1953:

Mr. Clardy: . . . the original act merely says the burden shall be upon the applicant. The change I propose is to put language in which says it shall continue to be upon him so that the person administering the act will not permit a man to merely say, "I am not a Communist," and then shift the burden on the United States of America to prove to the contrary . . .

Mr. Hillings: Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman, I recognize what the gentleman, is trying to do. I am in sympathy with the position he takes. I submit his amendment is absolutely unnecessary and is redundant. This protection has already been provided for in the legislation. The burden of proof is upon the individual in every case. The burden of proof never shifts to the Government. The legislation refers to the McCarran-Walter Act and makes the McCarran-Walter Act a part of the emergency law, particularly section 291, which I will read again, as I did earlier in the debate:

Whenever any person makes application for a visa or any other document necessary for entry or makes application for admission or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible.

Let me say that language specifically is a part of this act by reference. There is absolutely no need for this amendment. The protection we want is already contained in the bill.

sufficiency.⁶ The Service interpretation derived from the available information, the actual basis of appellants' complaints, is rationally supported by the record, and affords no ground for a judgment substitution.

CONCLUSION

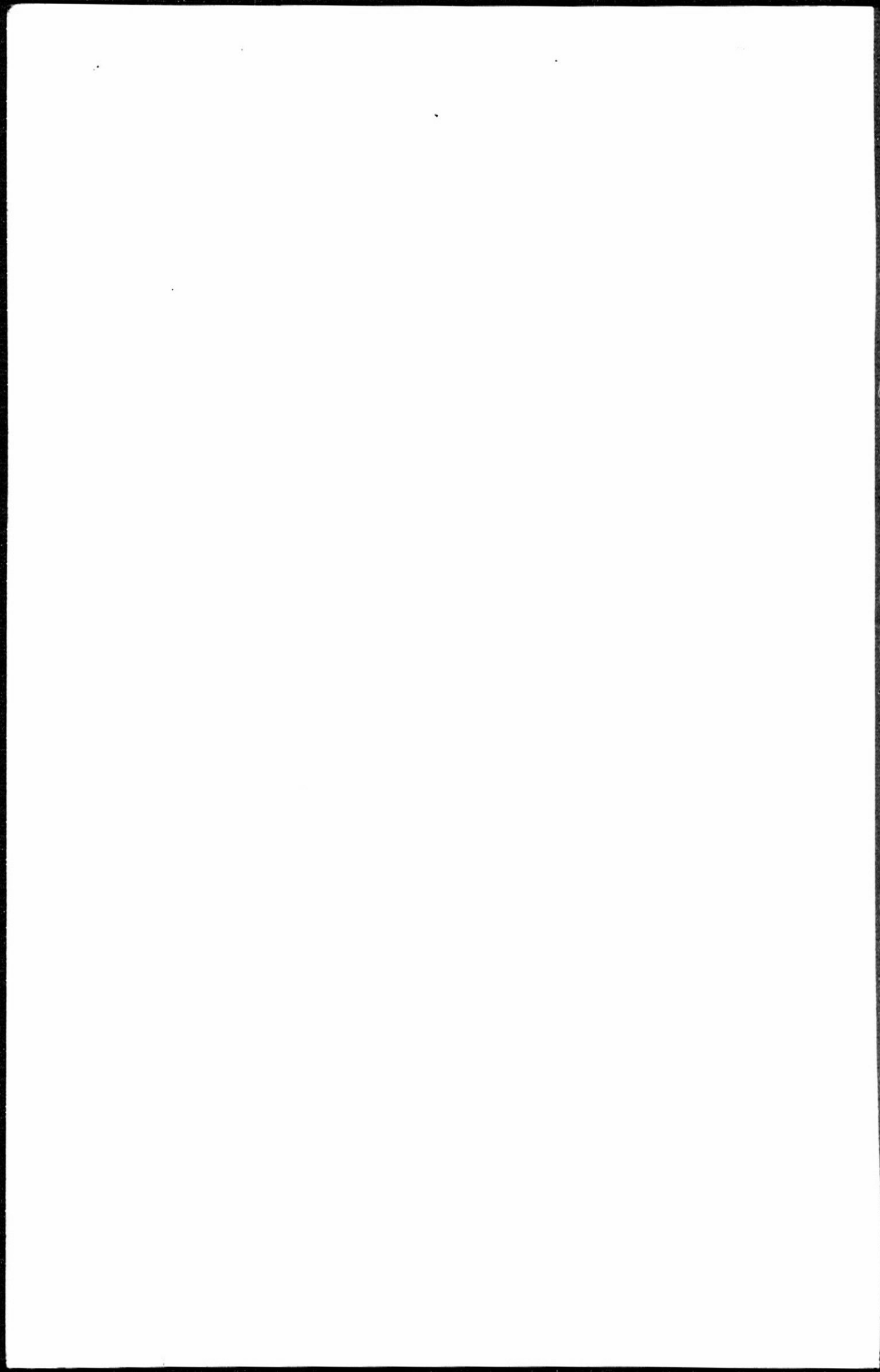
Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

OLIVER GASCH,
United States Attorney.

LEWIS CARROLL,
DONALD E. BILGER,
*Assistant United States
Attorneys.*

⁶ Appellants apparently failed to introduce at the administrative proceedings certain of the exhibits produced in the District Court: Exhibits 1-A and 2 (J.A. 9); exhibit 3 (J.A. 10); exhibit 4 (J.A. 11); exhibits 5 and 8 (J.A. 12); and exhibit 9 (J.A. 13).

SUPPLEMENT



Interim Decision #95

In the Matter of

LEOKE PILVI LAINE

In Adjustment of Immigration Status Proceedings

A-6897992

Decided by Central Office October 10, 1949

"Displaced Person"—Alien here and seeking adjustment of immigration status—Section 4 of the Displaced Persons Act of 1948—Eligibility-Evidence—8 C.F.R. 171—Country of last foreign "residence"—Meaning of term "residence"—"Fear of persecution" in Communist-dominated country (See Interim Decision #96).

- (1) Country of last foreign "residence" is determined from the factual complex surrounding the alien's physical presence in that country, so as to give effect to the Congressional intent involved, since the term "residence" is not defined by statute, and the legislative history and purpose of the Displaced Persons Act of 1948 show that a particular meaning was ascribed to that term.
- (2) The principal purpose to be achieved by the above Act was to "aid those who are stateless, who have no roofs over their heads, who have no haven to which they can repair."
- (3) *Some* of the factors to be considered on this question of residence are indicated by those enumerated herein, but such a list or summary is not exclusive of *other* factors; and the bearing of any or all of these factors must be viewed in the light of each individual situation.
- (4) A native citizen of Estonia residing there, forcibly displaced into Germany where she was never actually resettled nor absorbed, who remained a constant charge of UNRRA after Germany was liberated, may be found to have been a displaced person while in

Germany, and *not* a "resident" of Germany prior to coming to the United States, within the meaning of Section 4 of the above Act, under the circumstances stated.

- (5) "Fear of persecution" may be spelled out reasonably where the alien credibly establishes her opposition to Communism and it is shown that the country to which she is to return is Communist-dominated. (See Interim Decision #96).

BEFORE THE CENTRAL OFFICE

STATEMENT OF FACTS: This record relates to a 27-year old female, single, alien, a native and citizen of Estonia, who last entered the United States at port of New York, New York on December 2, 1947 when she was lawfully admitted to the United States under the provisions of Section 3(2) of the Immigration Act of 1924, and under the Act of June 29, 1946 as the alien fiancée of a member of the Armed Forces of the United States.

After the applicant had entered the United States, she discovered that her fiancé had married another, and she proceeded to the home of her uncle in Los Angeles, California where she now resides.

The applicant testified that she resided in her native country from her birth until September 1944 when she was forcibly taken to Germany by the German Army who were retreating before the Russian Army. She remained in Germany until her entry into the United States.

THE APPLICABLE STATUTE: The applicant seeks to adjust her status in the United States under the provisions of Section 4 of the Displaced Persons Act of 1948. The pertinent portions of that section follow:

- Sec. 4. (a) Any alien who (1) entered the United States prior to April 1, 1948, and (2) is otherwise admissible under the immigration laws, and (3) is a displaced person residing in the United States as defined in this section may apply to the

Attorney General for an adjustment of his immigration status . . .

(b) When used in this section the term "Displaced Person residing in the United States" means a person who establishes that he lawfully entered the United States as a non-immigrant under section 3 . . . of the Immigration Act of May 26, 1924, as amended, and that he is a person displaced from the country of his birth, or nationality, or of his last residence as a result of events subsequent to the outbreak of World War II; and that he cannot return to any such countries because of persecution or fear of persecution on account of race, religion or political opinions.

The applicable regulations pertaining to adjustment of status under Section 4 of the Displaced Persons Act of 1948 are found in Part 171 of Title 8 of the Code of Federal Regulations.

Applying the statute and the regulations applicable to the facts as presented by the record in this case, we find the following principal questions which will be discussed in the following order (1) displacement, (2) country of last residence, (3) persecution, (4) admissibility to the United States.

DISPLACEMENT: As recited above, the applicant was forcibly taken from her country of birth and nationality during September of 1944 by the German war machine and brought to Germany where under the existing law of that country she was compelled to labor. The applicant apparently was provided quarters by the German authorities in Windsheim, Germany. She remained there until the establishment of Displaced Persons Camps in Germany and stated that all displaced persons in Germany were gathered into camps, screened by UNRRA, and issued identification cards. The applicant presented a Displaced Persons Identification Card No. 403631 issued at Camp No.

92-307 on April 30, 1946 and was assigned the Displaced Person Registration No. G-09258447. This identification card was issued by the Deputy Director of what appears to be Camp No. 548. It bears the screening validation stamp of UNRRA. The applicant testified that she then took employment with the Allied Military Government in Germany. It appears that the applicant returned to the quarters she had previously occupied after having been classified as a displaced person and remained in those quarters and in the employment of the Allied Military Government until she came to the United States. We believe that the facts recited above conclusively establish that the applicant had been displaced from her country of birth and nationality to Germany as a result of events which occurred subsequent to and were a result of World War II. We do not believe that her displacement ceased while she remained in Germany. Although she was not within the physical confines of a Displaced Persons Camp and was gainfully employed, her activities in being self-supporting and assisting the Allied Military Government in its administration of Germany should not now be a bar to finding that she remained a displaced person. From her testimony which will be related below with reference to the issue of residence, it is clear that she was not resettled firmly in Germany. She was unwilling to return to her native country when offered the opportunity because of a reasonable fear of persecution. In this connection, it is noteworthy that the applicant was with her parents in Germany from the time of their transportation to that country from Estonia until she left in December of 1947. She testified that her parents have been admitted to the United States for permanent residence under the provisions of the Displaced Persons Act during October of 1948. The official records of this Service verify that statement. The applicant left Germany in the expectation of marriage as recited above before the Displaced Persons Act of 1948 became law. She and her parents were in similar circumstances while in Germany. Her parents as revealed by the documents which is Exhibit 11 were con-

sidered and classified as displaced persons by the Displaced Persons Commission.

COUNTRY OF LAST RESIDENCE: Having found that the applicant is a displaced person, it now becomes necessary to determine the country of her last residence. The Examining Officer has found that the applicant last resided in Germany, has no fear to return to that country based on reasons recognized as valid by the Displaced Persons Act and is therefore ineligible for adjustment of status under the Act. The crucial issue is therefore presented as to whether the applicant resided in Germany within the meaning of the Displaced Persons Act. In order to determine the issue a definition of residence within the meaning of the Act would be desirable. Residence is not defined within the body of the Displaced Persons Act.

In considering the Displaced Person cases coming before us under Section 4 of the Displaced Persons Act, we find that the term residence has legion ramifications. We have found however that to some degree applicants do fall into general classifications. We have found that some applicants did find residence in intervening countries to which they could return without fear of persecution on account of race, religion or political opinions.¹ In other cases we found that applicants were admitted to intervening countries under temporary terms or terms which were indefinite and that thereafter their status was converted to that of permanent residents.² Cases were also presented where applicants had been displaced within the meaning

¹ Matter of Z——, A-6588161 (August 3, 1949) (Palestine); G——, D.P. 4451 (July 15, 1949) (England); B——, A-6775576 (July 20, 1949) (France); K——, A-6626070 (August 4, 1949) (Philippine Islands); S——, A-6429627 (August 12, 1949) (Brazil); K——, A-6623718 (July 29, 1949) (Australia); F——, A-6712993 (August 4, 1949) (Dominican Republic); R——, A-6862631 (August 3, 1949) (Sweden); K——, A-6935889 (July 19, 1949) (Belgium); B——, A-9769264 (August 2, 1949) (Denmark); L——, A-7073670 (September 30, 1949) (Bolivia); W——, A-6320914 (June 6, 1949) (Columbia); F——, A-7052465 (May 5, 1949) (Uruguay); H——, A-6836905 (August 18, 1949) (New Zealand).

² P——, A-6817853 (August 25, 1949) (England); R——, A-5928020 (July 19, 1949) (Canada).

of the Act and thereafter taken by social agencies for humanitarian reasons to other countries. We found that in certain of these cases their sojourn in the intervening country was temporary in nature and did not partake of all the attributes of residence.³ In other cases the applicants had been displaced and then fled to various countries some of them literally fleeing around the world. These applicants resided in Refugee or Displaced Persons Camps in various countries and it was apparent from their method of living and the conditions under which they existed that their sojourn in the various countries was no more than a continuation of flight.⁴ Cases were presented to us wherein the applicants after having been displaced went to other countries. In some of these cases the terms of their admission or the circumstances surrounding their sojourn in those countries were unknown or clouded. It became necessary to cause the proceedings to be reopened to clarify the issue of residence.⁵

This examination of numerous cases arising under the Displaced Persons Act of 1948 directs that the term residents must be defined so as to give force, meaning and effect to the intention of Congress. A review of the arguments on the floor of Congress when the Act was under consideration reveals that the principal purpose to be achieved by the Act was to "aid those who are stateless, who have no roofs over their heads, who have no haven to which they can repair." (Congressional Record, June 11, 1948, P. 9043). With this in mind residence takes on a different meaning than the term connotes in other fields of law. Residence within the meaning of the Displaced Persons Act must of necessity mean a place of abode which is in the nature of a haven, and where the applicant could have resided undisturbed, without the fear of once again

³ G——, A-6881798 (July 21, 1949) (Sweden).

⁴ G——, A-6704683 (August 17, 1949) (Russia, Persia, India).

⁵ W——, A-6878353 (August 1, 1949) (Palestine); H——, A-6847991 (September 2, 1949) (China); O——, A-7795595 (September 15, 1949) (Canada); F——, (August 17, 1949) (Sweden); R——, A-7056394 (August 3, 1949) (Cuba).

being forced to wander in search of a home. Residence does not mean an abode of a temporary nature. Residence does not mean a sojourn which may be summarily terminated at the whim of authorities. There must be some assurance that the applicant would be permitted to sink his roots into the country, to become a member of the community possessing the same rights and privileges as other aliens residing in that country in the same general circumstances as himself.

Since the Displaced Persons Act compels us to consider persons situated in almost every country of the world, it is obvious that no one standard can be set up as a rule of thumb to determine whether the particular applicant has found a residence. All of the factors surrounding the applicant's sojourn must be examined. In our experience in the administration of the Displaced Persons Act insofar as it relates to persons residing in the United States we have found that the following issues are material and should be examined:

- (a) Length of sojourn
- (b) Terms of admission or latter modification thereof
- (c) Activities while in the intervening country
- (d) Intentions
- (e) Travel documents possessed by the applicant
- (f) Ability to return to the intervening country under the existing regulations of that country controlling the travel of aliens
- (g) The presence of other members of the applicant's family who remain in the intervening country
- (h) The restrictions placed upon the applicant by the regulations of that country
- (i) Whether the applicant was the constant charge of social or humane organizations
- (j) The policy of the government of the intervening country with respect to displaced persons, refugees or other aliens

- (k) The attitude of the intervening country with respect to applicants of particular religious, racial or political affiliations

This list is by no means exhaustive. Other issues may be presented which will have a material bearing upon the matter of residence. In each case where the question of residence must be decided as many of the above and similar elements should be developed upon the record. It should be pointed out, however, that by establishing one or more of the above or similar elements it will not necessarily follow that a finding that the applicant did or did not reside in the intervening country will be made. All of the factors which are present must be examined carefully and in each case an individual finding concerning the issue of residence must be made.

Turning to the facts in the case before us and examining them in the light of the principles outlined above, we find that she remained in Germany from September of 1944 until December of 1947. In a proper case, this period would be extremely important in determining whether residence within the meaning of Section 4(b) of the Displaced Persons Act had been established. However, in view of the other circumstances involved in this case, the length of residence to some degree loses its materiality. As we have seen, she was not admitted to Germany in the usual sense. She was brought to that country against her will by the German Armed Forces. At no time had her status in that country been adjusted to that of a resident within the usual sense by the authorities of that country. In addition, the applicant could not have reasonably expected to have been accorded the right to remain in Germany without being disturbed at some future date. The chaotic conditions which followed the cessation of hostilities in Germany prevented the assumption of an authority having the right to confer upon this applicant and applicants in similar circumstances the right to remain in that country indefinitely. The present situation in that country even at this time does not prophesy that conditions there will permit the assumption of an author-

ity having jurisdiction over all of Germany. Turning to the applicant's activities while in Germany, we find that first she was what is commonly called a slave laborer for the German war machine. Then upon liberation of that country, the limits of her activities broadened. However, these activities do not bespeak a condition of settlement. Her testimony reveals that she never considered Germany to be her home. It was always her desire to leave Germany. Initially she desired to go to Sweden but was prevented from so doing by fear of reprisals at the hands of the Germans. Nothing in the record discloses that she became a member of the German community. On the contrary Exhibit 14 which is a letter of recommendation from the Commander of the Military Government Detachment H-371, states that she resided in the Estonian colony. This would indicate that because of her background and condition of life in Germany, she retained her associations close to the country of her origin and was not being absorbed by the community. With respect to her intentions, we have heretofore stated that she testified she had no home in Germany, and evidently did not intend to remain in that country. When she departed from Germany she was in possession of a temporary travel document issued in lieu of a passport by the Military Government for Germany. Within that document is the legend that the document "does not entitle the holder to enter or leave the Western Zone of Germany unless endorsed with a valid entry or exit permit as requisite." We have been informed by the Permit Office of the Allied High Commissioner acting for the combined Travel Board in Germany that that office has jurisdiction over the issuance of permits to enter Germany. The office further informed us that it would be improbable that this applicant would be permitted to return to Germany under existing regulations and under the policy of that office. It should be stated however that this inability to return to Germany because of the difficulty of securing travel documents has no relation to the inability of returning to Germany because of fear of persecution. The difficulty of securing a travel

document to return to Germany is one mere point of evidence in the direction of a finding that the applicant had not resided in Germany within the meaning of the Displaced Persons Act. Under certain circumstances in conjunction with other factors, it may be found that an applicant has not resided in an intervening country where he must at all times remain in that country, for this restriction on freedom may have a bearing on the insecurity of the residence. We have seen that the only members of the applicant's family were her mother and father who were with her in Germany. They have been admitted to the United States under the Displaced Persons Act, being in possession of visas issued under Section 3 of that Act.

The record is silent with respect to restrictions placed upon the applicant with respect to her activities in that country. It does appear that she was the constant charge of UNRRA while she was in Germany after that country had been liberated. That she was not the object of the charity of that organization does not imply resettlement. In this particular case, we are obviously unable to determine the policy of Germany with respect to displaced persons, refugees or other aliens. However, it should be observed that when the Displaced Persons Act was under consideration on the floor of Congress, it was stated repeatedly that the presence of displaced persons in Germany hampered the development of that country because they were not being absorbed into the community and it became necessary for other governments including the United States to assume the responsibility of caring for these hapless individuals. Therefore, the United States as well as various other sympathetic countries set in motion procedures whereby the displaced persons in Germany would be offered a home in other parts of the world. If these individuals were settled in Germany it would not be necessary to provide them with a home elsewhere. This applicant fell within the classification of a displaced person as we have seen above. She has made no claim to oppression in Germany because of her religious, racial or political affiliations. It must be repeated again that when

this facet is examined it has no relation to that other eligibility requirement of fear to return. It may have a relation to the nature of the residence in the intervening country. For example, where an applicant by competent proof establishes that it is the policy of the government of the intervening country to prevent the settlement of persons of particular racial, religious or political affiliations.

It is concluded after a careful examination of all the factors presented in this case and after comparing those factors with the general principles concerning residence within the meaning of Section 4 of the Displaced Persons Act as recited above, that the applicant did not reside in Germany within the meaning of Section 4(b) of the Displaced Persons Act of 1948. Therefore, it is not necessary to determine whether the applicant is able to return to Germany without fear of persecution since Germany is neither the country of her birth, nationality or last residence. She has resided within the meaning of the Act in no other country than Estonia. She has acquired no other nationality than that conferred upon her at birth.

PERSECUTION: The applicant states that she is unable to return to Estonia, the country of her birth, nationality and last residence because she fears persecution on political grounds. Her testimony in the course of the hearings may be fairly resumed as follows:

'The forces of Soviet Russia occupied Estonia from June, 1940 to July of 1941. During that period those forces instituted a methodic course of destruction of every sign that Estonia had once been an independent democratic republic. The display of Estonia's national flag and a recitation of its national anthem was forbidden. War memorials in memory of the War of Liberation 1918-1920 were destroyed. Student organizations demonstrated against these oppressive activities of the Communists and as a result many of the students were arrested and persecuted. Those arrested simply disappeared. Her father enlisted in the Estonia Army during the War of Independence and remained a member of the Home Guard, an organization in opposition to Communism. After June

of 1940, many families were deported to Siberia and the cause of their deportation was their opposition to the Communist form of government. Some of the applicant's relatives were deported. Entire families were removed from Estonia to Russia and not only the adult members. To avoid possible deportation, the applicant's family moved from Tallinn to a country region in Estonia in an attempt to make themselves less noticeable to the Communists. After leaving Tallinn, her family was informed that armed Communists came to their former home in that city seeking her father and his family. The applicant interprets this action as a manifestation that she and her family were on a so-called Communist "black list".

When we examine the applicant's activities after she was removed from Estonia, we find that she preferred to remain in a country foreign to her and wherein she had no assurances of becoming a part of that country rather than return to her native country because she feared persecution on account of her political opinions and background.

The testimony of the applicant requires an appraisal of existing conditions in Estonia with particular reference to its political philosophy and form of government. To demonstrate the nature of the regime in Estonia, we quote at some length for the 1946 Supplement to the Columbia Encyclopedia at page 18:

"On September 29, 1939, Russian pressure caused Estonia to grant the U.S.S.R. several naval and air bases. In June 1940, Russian troops occupied Latvia, Lithuania, and Estonia and a pro-Soviet government was established. Elections held on July 14-15 resulted in the absorption of Estonia into the U.S.S.R. as its sixteenth constituent republic. After the German attack on Russia in 1941, Estonia was incorporated into the Ostmark Province of the Reich. Late in 1944, Russian troops reconquered Estonia and the Estonian Soviet Government, returned. The Soviet annexation of Estonia was not recognized by the United States, pending ultimate settlement of the question at a peace conference."

It is worthy of note that to those sovereignties who recognize the present regime in Estonia, that country is known as the Estonian Soviet Socialist Republic. That Estonia is now a Communist or at least Communist-dominated country is apparent. The nature of a Communist government or a Communist-dominated government is amply set forth in Matter of W——, A-6881778.

The resume above of the applicant's testimony, coupled with her western associations, her assistance to the Allied Military Government as an employee in Germany, her period of residence in the United States since December of 1947, her protestations that she is opposed to Communism accepted in the light of other testimony and documents which will be mentioned below pertaining to her moral character which lends credibility to her statements, credibly establishes that she is opposed to Communism. The doctrine laid down in Matter of W——, supra which may be fairly stated as follows:

“Where an applicant credibly establishes that he is opposed to Communism, there is a reasonable basis in fact for fearing persecution if he returns to a Communist or Communist-dominated country”.

should be applied to this case with respect to the issue of the applicant's fear to return to Estonia because of persecution on account of her political opinions.

ADMISSIBILITY UNDER THE IMMIGRATION LAWS AND OTHER FACTORS: The applicant presented a negative police certificate from the city of Windsheim, Germany. Exhibit 19 is a negative report from the Identification Division of the Federal Bureau of Investigation. She has been certified to be free of any loathsome or dangerous disease by officers of the United States Public Health Service upon the basis of serology tests and X-rays.

Since the applicant arrived in the United States she has resided in Los Angeles, California. The Police Department of that city reports that there exists no record against her within their files. An officer of this Service conducted an independent character investigation during which he

interviewed three citizens of the United States all of whom testified favorably. Exhibits 13 and 14 are letters of recommendation from officers of the United States Armed Forces for whom the applicant was employed in Germany with the Military Government, both of which are favorable. Exhibits 6, 7, 8, and 9 are affidavits and letters from persons who have known the applicant since she has been in the United States all of which attest to her good moral character. Exhibit 5 is a certification from P——— L———, the applicant's uncle, declaring that he will provide for her permanent shelter and continued financial support until she is able to support herself. In view of this declaration and in consideration of her education, background and activities in the United States as revealed by the record, it may be found that the applicant, if permitted to remain in the United States, will be self-supporting. From all the information available to this Service, it is concluded that if the applicant were now petitioning for admission to the United States, she would be admissible under the existing immigration laws.

No investigation by this Service, nor information before us has raised any inference that the applicant is or has ever been a member or in sympathy with any organization whose purposes are adverse to the best interests of the United States. Exhibit 14 states that the applicant has been investigated by our Counter Intelligence Corps in Germany. Exhibit 10 reveals that she had been screened by representatives of UNRRA in Germany.

FINDING OF FACT: Upon the basis of all the evidence presented, it is found:

- (1) That the applicant is an alien, a native and citizen of Estonia;
- (2) That the applicant has not acquired nationality in any other country;
- (3) That the applicant was last a resident of Estonia;
- (4) That the applicant last so journeyed in Germany as a displaced person;

- (5) That the applicant has not acquired residence in any country other than Estonia;
- (6) That the applicant last entered the United States at the port of New York, New York on December 2, 1947 when she was lawfully admitted to the United States as a visitor under the provisions of Section 3(2) of the Immigration Act of 1924;
- (7) That the applicant was displaced from the country or her birth, nationality and last residence as a result of events subsequent to and occasioned by World War II;
- (8) That the applicant cannot return to the country of her birth, nationality and last residence because of persecution or fear of persecution on account of her political opinions;
- (9) That the applicant is admissible to the United States for permanent residence;
- (10) That the applicant is and has been a person of good moral character.

CONCLUSION OF LAW: Upon the basis of the foregoing findings of fact, it is concluded:

- (1) That under Section 4 of the Displaced Persons Act of 1948, the applicant is eligible for adjustment of her immigration status in the United States.

RECOMMENDATION: It is recommended that the alien's application for adjustment of her immigration status under the provisions of Section 4 of the Displaced Persons Act of 1948 be granted.

IT IS FURTHER RECOMMENDED that if Congress approves the granting of the status of permanent residence to this alien, a record for permanent residence be created as of the date of the alien's last entry, and the alien charged to the appropriate quota of Estonia.

So ORDERED: